00093749

00093749

Digitized with financial assistance from
Shri Brihad Bhartiya Samaj
on 20 February, 2020

ESSAYS

HISTORICAL AND PHILOSOPHICAL.

VOL. I.

LONDON
PRINTED BY SPOTTISWOODE AND CO.
NEW-STREET SQUARE

HISTORICAL AND PHILOSOPHICAL

ESSAYS

93749

By NASSAU W. SENIOR, Esq.

IN TWO VOLUMES.

VOL. I.

LONDON:
LONGMAN, GREEN, LONGMAN, ROBERTS, & GREEN.
1865.

PREFACE.

ONCE more it is my painful duty to bring out a work of Mr. Senior's which has not received his last corrections. These Essays were prepared for publication in the winter of the year 1862. The one on Combinations and Strikes is taken from the Report of the Handloom Weavers' Commissioners, drawn up by Mr. Senior in 1841. The other Essays have appeared in the form of articles in Reviews.

There is one subject—Ireland—that largely occupied his thoughts and employed his pen, which is only incidentally mentioned in these pages. He had intended to put together his writings on Irish affairs in a separate volume; but this design was not fully carried into effect.

Considerable additions by the Author will be found, especially in the first of these two volumes,

to the Essays as they originally stood. The rapid changes in public affairs within the last two years would no doubt have induced him to make still further additions and some alterations had he lived to revise them for the press.

M. C. M. S.

KENSINGTON:
January 31, 1865.

CONTENTS

OF

THE FIRST VOLUME.

CHAPTER I.

FRANCE, AMERICA, AND BRITAIN.

PAGE

Influence of National Feelings on Public Conduct . . . 1
Conduct towards Civilised States only considered . . . 5
FRANCE:—
Her Political Education 6
Her Pride 8
Her Vanity 10
Her Ambition 11
Her Immorality . . . . . „
Her Boldness 12
Her unfounded Fears of Attack 13
Her Sympathy barren 16
Her Want of Generosity . . . . . „
AMERICA:—
Her Pride 18
Her over-confidence in the Future 19
Her Vanity 20
Her ill-directed Attempts to Influence England . . . „
Her Ambition 22
Her Conduct to Texas 24
Her Want of Prudence 28
Occasioned by her Government being in the hands of the uneducated portion of the People 30
Her Litigiousness 31
Her Want of Sympathy 32
Her Irritability 33

ENGLAND :— PAGE
Her Pride 34
Her Intolerance 35
Occasioned by lurking Doubt . . . . . ,,
General Indifference of Englishmen to Foreign Politics . . 37
Its Advantages and Disadvantages . . . . ,,
Her Conduct as to the Slave Trade 41
Case of the Caroline 43
Case of the three French Vessels captured in the River Bonny . 46
Her Treatment of Portugal 47
Her Treaty with America 50
Its Ratification Refused by the Senate 51
Perverse Conduct of America 52
General View of the Conduct of Portugal 56
France, America and England, as to the Slave Trade . . . ,,
England not Ambitious . . . . . ,,
England rather Rash than Timid 59
England Pertinacious 60
England Irritable, though less so than France or America . 62
England Placable and Sympathetic 63
England pushes to an extreme her Belligerent Rights at Sea . 66
Not on Land 67
Her Ill-treatment of Norway 68
Faithful to Engagements 69
Her Injustice to Neutrals 71
Injustice and Folly of her Treatment of Denmark . . . ,,
Orders in Council of 1806 and 1807 76
Unjust Seizure of Sailors on Neutral Ships . . . 78
Her Justice in Peace 79
Russo-Dutch Loan 80
As popular Influence increases England Improves . . . 82
America Deteriorates . . . . . ,,
France remains Stationary 83
Differences with America should always be made Subjects of Arbitration 84
Permanent Alliance with France impossible . . . 85
English Diplomacy too active 90

APPENDIX TO CHAPTER I.

	PAGE
Nations learn little from Experience	91
Progress of America during the last twenty years	93
Its Effects on her Public Conduct	94
Ambition	95
Want of Faith	„
Insolence	„
Attributed by some to Prevalence of the South	96
By others to Prevalence of Foreigners	97
Story of her Conduct towards Mexico continued	98
Motive for Annexing Texas	„
Remarks of Dr. Channing on that Annexation	99
„ John Quincy Adams	„
„ Chancellor Vent	100
„ Mr. Jay	„
Means by which Mexico was Forced into War	101
Mr. Benton's Remarks	„
General Taylor's Proclamation	103
General Kearny's	„
Bombardment of Vera Cruz	104
Resisting Mexicans Treated as Traitors	105
General Scott's Proclamations	106
Conduct of America since the breaking out of the Civil War	107
The Civil War on the part of the South Wanton and Wicked	108
On the part of the North Defensible	109
Folly and Injustice of the Morill Tariff	„
Folly and Inconsistency of her Treatment of the Seceders as Rebels	111
Whether Secession was Rebellion or Breach of Treaty an open Legal Question	112
Opinions thereon of the North in 1856 and 1857	„
Ferocity of the War	116
Louis Napoleon's Estimate of the Feelings of France	118
Correspondence of his Feelings and Opinions with those of the uneducated French	121
Difference as to War with England	123
Louis Napoleon Dreads but Prepares one	124
Opinion of a Legitimist	127
Improvement in the Conduct of England since 1842	134
M. de Tocqueville's Complaint of her Selfishness	135
She is far less Selfish than France	136

CHAPTER II.

THE LAW OF NATIONS.

PAGE

Different Meanings of the word 'Law' 140
Difference between International Morality and International Law . 142
Differences between International Morality and Private Morality . 144
Differences between the Sanctions which restrain International Immorality and Private Immorality 146
Sources of International Law:—
1. Judicial Decisions 151
2. Opinions of Jurists on Cases submitted to them . . 152
3. Opinions of Writers . . . . . „
4. Statements and Admissions by interested Parties . . 153
Importance of Knowledge of International Law . . . 154
Obstacles to its Progress 156
First Obstacle:—
Verbal Ambiguities 156
Four different senses in which each of the words 'jus,' 'droit,' 'recht' and 'diritto,' are used. 156
Influence on Grotius of the Ambiguity of the Word 'jus' . 162
Influence of that Ambiguity on English Writers. . . . 166
Second Obstacle:—
Uncertainty of Sources of International Law . . . 167
Mr. Wheaton's Opinions as to the Progress of International Law. 175
Mr. Wheaton's Opinion that it has chiefly consisted in an approach to the Doctrines of Grotius controverted . . 177
Discussion of the Right of Intervention to preserve the Balance of Power 180
War against France of 1688 182
War of the Spanish Succession . . . . . „
War of Sweden against Russia of 1788 186
Wars against Napoleon 187
Discussion of the Right of Intervention in consequence of the Internal State of another Country 190
As Dangerous to the Intervening State . . . . . „
Partitions of Poland 192
As Offensive to the Sovereign of that other Country . . „
Intervention of the Triple Alliance against the Belgian Revolution of 1789 195

PAGE
History of that Revolution 196
History of that Intervention 204
Intervention between Holland and Belgium in 1831 . . 206
Intervention between Turkey and Greece in 1827 . . 208
Intervention of Prussia in support of the Stadtholder in 1787 . 211
Intervention of Austria and Prussia in favour of Louis XVI. in 1792 214
Origin of the War between England and France in 1793 . . 215
Interventions by the Holy Alliance 222
Spanish Constitution of 1812 . . . . . „
Spanish Revolution of 1820 224
Neapolitan and Sicilian Revolutions of 1820 . . . 226
Declarations of the Congress of Laybach . . . 228
Protested against by England 229
Suppression by Austria of the Neapolitan and Sicilian Revolutions 230
Piedmontese Revolution of 1821 231
Its Suppression by Austria . . . . . „
Traditional Hostility of France to Freedom in Spain . . 234
Congress of Verona 237
Its Conduct towards Spain . . . . . „
Suppression of the Spanish Revolution by France . . 240
Right to Intervene in Favour of Subjects against their Sovereign now generally Denied 241
Rights to Intervene in Favour of a Sovereign against his Subjects
Affirmed by Russia, Austria and Prussia . . . . . „
Denied by England 242
Affirmed or Denied by France according to her Interest . . 243
Improvements in the Laws of War 244
Deterioration in the Laws of War 245
New Right of Search for Verification of Flag occasioned by the Treaties and Laws Prohibiting the Slave Trade . . . 248

APPENDIX TO CHAPTER II.

Rights of Subjects against Sovereigns affirmed by England, France and Sardinia 255
Right of Interference in support of those Rights affirmed by England „
Remarks of Prince Satriano on the Interference of England in Sicily in 1848 257
Interference of Sardinia against Austria in 1848 . . . 260
Count Balbo's History of it 265

PAGE
Interference of France and Sardinia in Italy in 1859 and 1860 . 265
Danger of allowing Universal Suffrage to decide International Relations 267
Improvements in International Law made by the Treaty of Paris of 1856 268
Conduct of America thereon 269
Destruction by America of Harbours 270
Proposal in that Congress of a general recurrence to Arbitration . 271
Not acted on by France on the 'Charles et Georges' Case . . „

CHAPTER III.

LORD BROUGHAM'S POLITICAL PHILOSOPHY.

Governments may be considered Historically, Scientifically, or Practically 276
Divided by Lord Brougham into Monarchies, Aristocracies, Democracies, and Mixed Governments 280
Pure Governments Defined . . . . . „
Such Definitions unavoidably Vague 285
Lord Brougham's description of Absolute Monarchy 289
His Opinion that such Monarchies are peculiarly prone to War, to Extravagance, to Standing Armies, to Centralization, to Primogeniture, and to Absence of Free Opinion, questioned . . 295
His Opinion that in Absolute Monarchies Succession is more advantageous than Election, questioned 303
In such Monarchies the Principle of Succession often leads to Civil War 305
But except in Ecclesiastical Monarchies an Absolute Monarchy seldom remains Elective 308
Lord Brougham's Definition of Aristocracy 309
Governments are Exclusive or Non-exclusive 310
Lord Brougham describes the Governing Body in an Aristocracy as
1. Irresponsible 311
2. Uninfluenced by Public Opinion . . . . . „
3. Affected by Interests differing from those of the Nation . „
4. Ill-Educated . . . . . „
These Vices not necessarily or peculiarly incident to an Aristocracy . 313
Its Merits—Stability, Pacificness, Knowledge and Experience . 315

PAGE
Effects in England of the Preponderance of the Aristocracy in the Civil Service 319
In the Military Service 320
Military Advantages of the Absence of an Aristocracy . . 321
Lord Brougham's definition of a Democracy 325
Defective as not including Exclusive Democracies . . . „
Merits ascribed by Lord Brougham to a Pure Democracy . . 327
Some of these Merits contested 328
Lord Brougham's Opinions that a Democracy is inconsistent with an Established Church, and that an Established Church is useful, described 330
Ambiguity of the term 'Established Church' . . . 332
The different Classes of Mixed Governments 334
Cross divisions among those Classes 335
Important effects of peculiarties apparently slight exemplified in
The Absence of an English Sovereign from Cabinet Council . 338
The Immunity from Prosecution of Public Officers in France . 338
The Reeligibility of an American President . . . 339
Mixed Governments have been the best and the worst . . 340
Lord Brougham's Opinion as to the merits of Mixed Governments questioned 341
Lord Brougham's Opinions in favour of Triennial Parliaments and a Suffrage practically Universal stated 345
Lord Brougham's View of the British Constitution . . . 346
His Opinion that the Crown, the Lords, and the Commons, can act independently one of another, questioned . . . „
The Democratic Element the Governing Power in England . . 356
Circumstances which may bring on Peerage Reform . . . „
The Controversial Tone of the Essay accounted for . . . 358

CHAPTER IV.

CONFEDERACY AND UNION.

The Zollverein 361
The Bund 363
Unity of the German Empire destroyed by the Treaty of Westphalia 365
Its Coherence Destroyed by the Wars terminated by the Treaty of Campo Formio 366

PAGE

German Liberty Destroyed by the System of Indemnities . . 367
Parties to the Conference of Vienna in 1814 370
Liberality of Austria, Prussia, and Hanover 372
Illiberality of Bavaria, and Wirtemberg 373
Liberality of Russia 376
Obstinacy of Bavaria and Wirtemberg 377
Conferences of 1815 376
Prussian and Austrian Projects 378
Outline of Bund 379
Results of Bund 384
Why the Bund is a Treaty, not a Union 385
Is the American Union a Confederacy, or an Incorporation . , 387
The Delegates of 1774 389
The Article of Confederacy of 1775 390
„ of 1776 391
Washington's Complaints in 1776 394
„ in 1777 396
„ in 1778 398
„ in 1780 . . . . . „
„ in 1781 399
Conclusion of the War 400
Working of the Confederacy during Peace 401
Present Constitution 402
Why it is a Union, not a Confederacy 406
Subsequent changes bad 411
Some of the Defects in the Constitution 412
Why they have not been more mischievous 413

HISTORICAL AND PHILOSOPHICAL ESSAYS.

CHAPTER I.

FRANCE, AMERICA, AND BRITAIN.*

AMONG the changes which have altered the political world during the last hundred years, one of the most remarkable, though it has been little remarked, is the degree in which the great and permanent bodies which now constitute nations, have assumed, in their mutual relations, an individual character; so that while, under the influence of their increasing intercourse, the mere external peculiarities of the inhabitants of different countries are becoming obliterated, peculiarities in the public conduct of those countries are becoming more marked. The manners of an Englishman and a Frenchman differed much more in the seventeenth century than they do at present. But the conduct of the two countries as nations, their behaviour towards each other, and towards other independent communities, was then much more

* Vide 'Edinburgh Review' for April 1842.

governed by similar causes than it is now. In fact, until within a very short period, the conduct of a nation, as a nation, depended principally on the accident of the character of the king or of the minister. A succession of warlike kings made Denmark a military power; a succession of quiet half-witted sovereigns reduced her to political nullity. Under Richelieu, France was intriguing and ambitious; under Fleury, she was careless and pacific. But now that in almost every country the people interfere in public affairs, often direct them, and almost always influence them, the conduct of a nation must always be affected, and often is governed, by the general disposition of the millions who constitute it: it becomes a permanent reflection of the national character, and is tinged with all the peculiarities with which climate, race, religion, institutions, and past history, have coloured that character. In former times, the conduct of a nation could be best predicted by considering the feelings and habits of the individuals who presided over its councils. The principal elements of such a calculation are now drawn from the character of the people itself. Our ancestors at one time feared the ambition of Louis, and at another relied on the courage of Frederic. *We* dread the ambition of France, and rely on the prudence of Prussia.

The most remarkable exceptions to this rule are to be found in Russia and Austria. The conduct of each of these empires has often appeared to depend on the peculiarities of an individual. The death of Alexander, and the succession of Nicholas, altered the whole tone of Russian politics—they are still affected by the personal

dislike of Nicholas to Louis Philippe; and the prudent and pacific behaviour of Austria is mainly attributable to the wisdom of Metternich. But this is accounted for when we recollect, that Russia and Austria are the empires least affected by the popular voice. In both of them, as far as foreign relations are concerned, the people are nothing—the government is everything. On the other hand, in the three great countries which enjoy the most popular institutions—the British Empire, France, and the United States of America—the character of the government for the time being has, under ordinary circumstances, little influence on the public conduct of the nation. A vain, or a rash, or a litigious, or a procrastinating minister, may indeed bring either of them into difficulty; but if the nation do not share his faults, he will be driven from power, and a successor appointed for the express purpose of retracing his steps.

Of course, we do not mean to affirm that the public conduct of any of these communities is uninfluenced by the personal qualities of the statesmen for the time being in power; especially if those qualities are, as was lately the case in France, and perhaps in the United States, an exaggeration of the national peculiarities; but we affirm that those qualities, though not positively, are comparatively unimportant. In short, that whereas formerly the character of the minister determined the conduct of the nation, now the character of the nation determines the conduct of the minister.

For the purpose both of estimating the future prospects

of the civilised world, and of deciding what ought to be the course of our own policy, it is therefore important to consider what are the characteristics by which each of these three great powers is distinguished in its public conduct towards other civilised states; in order that we may ascertain the chances of peace and the means by which it may be promoted, and the chances of war and the means by which it may be averted.

We use the words 'public conduct,' because it is only as respects their public conduct that nations can be treated as persons. The enterprises of individuals, unsanctioned by their government, do not commit the nation. It is the duty, of course, of every government to do all that it can to prevent any of its subjects from injuring those of other governments in person or in property; but its public character is not affected by aggressions, though made by its own subjects, if it do not directly or indirectly sanction them, either by conniving while they are planned and executed, or by allowing the perpetrators to remain unpunished. In fact, for the purposes of this discussion, we identify nations with their governments. It is possible that, if the opinion of the people of England could have been taken, it would have been found unfavourable to our treatment of Denmark in 1807 and again in 1813. It is possible—nay, it is probable—that the majority of the people of France may have disapproved of the invasions of Spain by Napoleon and by Louis; and that they may now disapprove of the intrigues with which their diplomacy is harassing her. But a nation, when

considered as an individual, must be judged by her acts; and her act is what is done in her name, and by her authority. We should be grieved, indeed, if the majority of educated Englishmen, or the majority of educated Frenchmen, could act as their respective governments have acted.

We use the words 'towards other civilised states' first, because that part only of the public conduct of a nation affects the practical questions which we are considering; and, secondly, because unhappily such is public morality that the mode in which a nation treats barbarians, or even semi-barbarians, is no evidence of the mode in which it would be likely to treat a civilised community. In estimating the public character of France, therefore, we do not advert to her relations with the African tribes; and in estimating that of America, we do not allude to her treatment of the Indians. In estimating that of England, we shut our eyes to all that she has done in Hindostan or Cabul.

The qualities which principally mark the conduct of a nation, in its intercourse with other civilised nations, are pride, vanity—using that word to signify the desire of admiration—ambition, fear, resentment, sympathy, and justice; and the influence of these motives depends partly on the degree in which they are felt, and partly on the causes from which they originate. Different nations may be equally vain, but one may desire to be admired for her power, another for her civilisation, and a third for her integrity; and others are to be found who, like Austria,

seem utterly careless as to the opinions of foreigners. Again, two nations may be both prudent; but one may fear the evils of defeat, the other the evils of victory. One surrounded by more powerful neighbours may be in constant dread of invasion; the other may feel that her comparative force secures her from attack, but that a war, though it be successful, will ruin her finances. Under such circumstances, prudence would lead the former to contract alliances, in order to secure herself from aggression; the other to avoid them, in order to lessen the chances of being dragged by her treaties into a contest.

We now proceed to consider in detail the public character of the three great nations which we have mentioned, beginning with France.

The circumstances under which France has been placed, have been, in most respects, eminently unfavourable to her public morality. Until the Revolution, the French people had no influence on the policy of their country. It was dependent sometimes on the will of a king, sometimes on the intrigues of a court, and sometimes on the caprice of a mistress. A dispute between Louis XIV. and Louvois about a window, occasioned the devastation of the Palatinate. A well-timed visit by Horace Walpole to Fleury rendered France for twenty years the ally of England. It was the casting voice of Madame de Maintenon that decided whether France should violate or respect the treaty which excluded the Bourbons from the Spanish succession.

At length the power which the crown had abused for

centuries passed to demagogues, whose influence depended on their popularity, and whose popularity could be maintained only by satisfying the desires or flattering the prejudices of the new sovereign—the people. From their hands it was extorted by a soldier more intent on conquest, and more unscrupulous as to the means of obtaining it, than any of the public enemies with whom Europe has had to struggle since the times of Attila. The great object of Napoleon was to seduce the people, by gratifying the passions which are strongest among uneducated politicians—vanity and ambition. His talents, his habits, and his inclination, led him to offer military glory to the one and extension of territory to the other. Never were these intoxicating bribes so profusely supplied. Of course, for this purpose all treaties, all engagements, all faith, and all law, public and private, were to be disregarded. On no other condition could the empire of the French be stretched from the Vistula to the Guadalquivir. It was his business, therefore, while he inflamed and perverted their ambition, to stifle their feelings of morality and justice. In both attempts he was equally successful. His boast, that millions joined in his views, was, unhappily for those millions, well founded. The misfortunes of the latter portion of his career, though not quite so mischievous to the national character as his earlier successes, still helped to deteriorate it. He taught the French to submit to defeat. He taught them to welcome, or at least to pretend to welcome, humiliation;—to receive with acclamation sovereigns twice forced on them by foreigners.

The degradation of the early period of the Restoration was followed by still more corrupting successes. The government of the Bourbons has wanted only power to teach lessons as demoralising as those of the Empire. The invasion of Spain, in 1822, was as fraudulent, as unjust, and as rapacious as that of 1808. The only difference was that Napoleon endeavoured to render Spain a dependency of France, under his brother; and Louis to throw her bound under the feet of 'a descendant of Henry IV.' In fact, of the two pieces of injustice, monstrous as they both were, the last was the more oppressive; for Napoleon was a reformer—his success might have regenerated Spain. The Duke of Angoulême was the restorer of tyranny.

We will now consider the national character which has grown up under such influences. If the picture be unfavourable, no one will be surprised when he reflects on the education which the nation has received.

Among the most striking qualities of France is her pride. One of her most acute and most philosophical statesmen has proclaimed from the tribune, that pride, nourished by the victories and triumphs of more than two hundred years of war, is now the only remaining link that keeps her in a social state.* We should differ from M. de Tocqueville with great diffidence, whatever the subject were, and as to the character of his own country we yield implicitly to his authority. But though military

* Speech of M. de Tocqueville in the Chamber of Deputies, November 30, 1840.

pride be the absorbing sentiment, not merely the ruling but the despotic passion of France, her glories in war are not the only objects on which she dwells with complacency. She is proud also of her power, of her influence, and of her civilisation. Her power is formidable, but it is probably not superior to that of England; it is inferior to that of Germany, when Germany can be combined. She believes it to be a match for all Europe. Her influence is considerable; but she believes that all the nations between her frontier and the Rhine are anxious to be incorporated in her dominions. It is fortunate for France, as well as for Europe, that she has had no opportunity of ascertaining the truth of this opinion. Her civilisation is great: she believes that it is unrivalled. She is certainly eminent in war, in literature, and in the fine arts; but in education, in wealth, in the ordinary arts of life—in short, in most of the attributes that contribute to the welfare of the mass of the people, the bulk of the population of France is inferior to that of Holland, of Belgium, of Switzerland, and of Great Britain.

In the midst, however, of this overweening self-estimation, she seems always beset by doubts as to the reality of the grounds on which it is founded. Proud as she is of her glory and of her power, she cannot forget that at sea she has been unsuccessful for centuries, and that on land her defeats have been as signal as her victories. She cannot but perceive that, while all Europe is advancing, her own population is almost stationary, her agriculture almost barbarous, and her commerce bearing every year

a less proportion to that of her neighbours. She is restlessly anxious, therefore, to support her claims by the suffrage of those around her, and in constant fear that the verdict may be against her. She is as vain, as sensitive to the sentiments of others, as if, like Russia, she were struggling to emerge from barbarism. All her conduct has reference, not so much to its effects on her own happiness, as to the opinions of her neighbours. To induce her to make railroads, she is told that her national honour requires them.* To induce her to continue the fortification at Paris, she is told that London and Vienna will illuminate if she abandon it. With an inconsistency, not uncommon where vanity is the prevailing passion, she, at the same time, believes herself to be the object of general admiration, and is always watching to detect and to punish an insult. She quarrels with her old allies the Swiss, obstructs their commerce, and threatens their independence, because the Diet has complained, as she thinks, too bluntly, that she has sent a spy with a fabricated passport into their territory. She conquers Algeria because the Dey has been rude to her consul. She threatens all Europe, arms half a million of men, and is inclined to arm half a million more, because she has received, according to her own account, not an injury, or even an insult, but an act of discourtesy. She has all the arrogance of a giant, and all the susceptibility of a dwarf.

* See the able Report of M. de Beaumont, No. 168. 1840.

Another prominent part of her character is her ambition. She desires not happiness, but power; and aims at increasing that power, not by the improvement of her own resources, but by appropriating those of others. She still clings to the barbarous doctrine of the middle ages, that a nation becomes great, not by the growth of its own population, the increase of its own capital, and the improvement of its agriculture and manufactures, but either by seizing the territory and incorporating the subjects of its neighbours, or by obtaining a preponderating influence over their councils. As far as she can, she proposes to extend herself by conquest; and where that is impossible, she strives, by treaties, by intermarriages, by promoting dissensions between states and factions, party spirit, and civil war in each separate community, to create occasions for her interference, and the means of establishing or confirming her influence.

We lament to add that she is checked by no feeling of justice, of faith, or of public morality. She does not even pay to virtue the homage of hypocrisy. She avows that a solemn treaty of peace is a truce to be broken by her as soon as it suits what she supposes to be her interest. She proclaims the right of every nation to manage its own affairs; and invades Spain, because the Spaniards have required a constitution from their despot. She fears that her influence may decline in Italy, and to restore it seizes, in profound peace, on Ancona. She wishes for another island in the Mediterranean, and proposes to rob Spain of Majorca. She guarantees the integrity of the

Ottoman Empire, and threatens war if she is not allowed to dismember it.

All these aggressive propensities she supports by fearless daring. 'La France,' says Chateaubriand, 'est un soldat.' She has the virtues as well as the vices of that unsocial profession. No nation is so little deterred by the dread of war; none supports its actual presence with more intrepidity. In every other civilised country the preservation of peace is held the great duty of a statesman: in France, M. Thiers could say that he trusted that he should not be considered very culpable for having occasioned the probability of war. In what other country could a statesman have declared that, rather than that the Eastern Question should be settled without French intervention, or that France should be supposed to be unprepared for war, or that, on a matter which she had agreed to arrange in concert with other powers, she should be required to acquiesce in the unanimous decision of all the other parties to the agreement—rather than accept any one of these alternatives, he would plunge into a thousand wars? Yet such were the words of one of her wisest and one of her most moderate statesmen.* In fact, France thinks that she has nothing to fear from war. All her best colonies she surrendered long ago; and it is no slight set-off against the expense of a contest that it might set her free from Algiers. Her continental territory is too compact, and her population is too homogeneous, for

* M. de Tocqueville.

partition, and her own laws in a great measure exclude her from commerce. On the other hand, she fancies that she has much to gain. She is anxious to extend her territory to the limits which, because she thinks them convenient, she calls natural. She burns to wipe from her arms the disgrace which she thinks was inflicted on them by the calamitous termination of the imperial wars. And, above all, she is anxious to punish those whose resistance occasioned those wars to terminate in her defeat, and to weaken those whose power overbalances her own.

And yet the boldness with which she meets danger is joined to a remarkable tendency to fear it where none exists. With the largest army, the strongest fortifications, the most compact frontier, and the most warlike population in Europe, she is as apprehensive of being attacked, invaded, and overrun, as if she possessed only the scattered and assailable territory of Prussia or Austria. She is spirited; but her spirit is like that of a high-fed horse, always looking for something to start at, and heedless of the real danger into which it rushes to escape an imaginary one.

This constant state of anxiety and apprehension, so strange in a brave, powerful, and proud nation, may appear to be in part explicable by her vivid recollection of the calamities of 1814 and 1815; yet while this restless fear of attack is peculiar, among the great nations, to France, there is not a country on the continent that has not been forced during the present century to conclude an unsuccessful war by a disgraceful peace.

There is scarcely a capital that has not been occupied by an enemy. If the mere recollection of former misfortunes necessarily inspired a dread of their recurrence, every nation on the continent would share the fears of France.

We believe the real causes of the constant anxiety of France to be two. First, the consciousness of her own plans, and a tendency to believe that other nations are as rapacious and as unscrupulous as herself. She knows that nothing but despair of success prevents her from seizing on Belgium, on Rhenish Prussia, on the Bavarian Palatinate, on Switzerland, on Savoy; in short, on every territory which it would suit her convenience to usurp: and she naturally imputes corresponding feelings to her neighbours.

And, secondly, she knows that she is an object of fear and of dislike to every people and to every sovereign around her. She knows that the despotic monarchs hate the freedom, such as it is, of her institutions—her trial by jury, her constitutional rights, her open debates, her licentious press; and, above all, the example of an elected king. She may suppose them willing to follow the precedent of her own conduct towards Spain, and to occupy her territory in order to enable Henry V. to give to his subjects institutions which they cannot hold except from him.* She knows that both sovereigns and people regard her as a hostile camp, threatening them with the

* See the Speech of Louis XVIII. January 28, 1823.

evils of war, and inflicting on them those of an armed peace. They impute to her the stoppage of public works, the absorption of capital, the commercial disturbance, the pressure of taxation and military service, and the financial derangement which are the necessary consequences of that unsettled state.

In believing that they would gladly see her weakened, France is right. But in fearing that, while she leaves them unattacked, they will attack her—in believing that there is a possibility of her being the object of an aggressive war—she is grossly deceived. There is not a country in Europe, except France, mad enough to engage voluntarily in war. In some of them the public income is annually deficient; and those which have avoided a deficit find their present expenditure pressing hard on their revenues. Again, there is not a single great country which could rely in time of war on the zealous cooperation of its whole population; or indeed which would not dread to find a portion of them among its enemies. Russia is vulnerable in Poland; Prussia in her Rhenish provinces; Sweden in Norway; England in Ireland and in Hindostan; and Austria consists of four nations, accidentally united under one head, but with scarcely more coherence than that which existed between England and Hanover. Can it be supposed that governments in such a situation, financial and political, would voluntarily incur the certain evils, and the uncertain but not less formidable risks, of war?

Among the qualities on which France prides herself is

her sympathy. It was to be expected that a nation so susceptible of impressions would take a lively interest in the fortunes of her neighbours. And such an interest she certainly does take; but, with the exception of the first American war—and even there more is to be attributed to her hatred of England than to her sympathy with America—we do not recollect a case in which her sympathy has led her to make any sacrifice for the benefit of those on whose side her feelings were engaged. She has always expressed a strong interest in the welfare of Poland. In 1806, and again in 1812, she might have restored Poland to nationality and independence. She half promised that she would do so; but on consideration, she doubted whether she herself should be a gainer, and she refused. Another of her protégés has been Spain. For the greater part of the last century the two nations were in the closest alliance. The friendship of Spain has been rewarded during the present century by a succession of injuries and insults, such as one nation scarcely ever endured from another.

We shall conclude our view of the character of France by some remarks on the mode in which she is influenced by resentment. In all generous natures—we might almost say among all well-instructed persons—resentment is felt only where there is a feeling of injustice. None but a child, and an ill-educated child, beats the ground on which it has fallen. Only the lowest criminal reviles the judge for merely pronouncing the sentence of the law. A generous man admires the courage and skill that are

opposed to him. He puts himself, from time to time, into the place of his adversary, and sympathises with qualities which he hopes that, under similar circumstances, he would himself exhibit. And even a man deficient in generosity and virtue, though he may pursue his schemes of aggrandisement or avarice without regard to the rights of others—though he may be careless of the misery which their prosecution occasions—seldom retains, unless he be thoroughly uneducated, deliberate resentment against those who have offered to him what he feels to be a legitimate resistance. He may be an unfair judge as to the resistance which is legitimate. He may be indifferent to the suffering which he inflicts in order to crush or to intimidate his opponent; but, unless he can persuade himself that he has been unfairly treated, his anger ceases with the contest. Now, as individuals, Frenchmen are generous; in the Peninsular war the French troops treated the English, not only without animosity, but with as much forbearance and even kindness as was consistent with their hostile relation. But these qualities vanish when France feels and acts as a nation. She seems to consider all opposition to her wishes as an insult, and all actual resistance, whether just or unjust, as a crime; and she transmits an inheritance of hatred from one generation to another. Who would have supposed that in 1840, Waterloo and even Aboukir were unforgiven? France is the only civilised nation in which revenge has been exalted into a policy, in which statesmen can venture to proclaim it from the tribune as a motive to action.

We now proceed to America. The characteristic in which she most resembles France is pride. It is, however, less excessive and better directed. The pride of America dwells principally on her institutions, on the general wealth and intelligence of her population, on her rapid rise, and, above all, on her vast prospects. These are more legitimate sources of self-esteem than most of those dwelt on by France; and America errs much less than France in her estimate of her own superiority. We certainly see much to disapprove in the institutions of America; we feel that they were better fitted to her earlier than to her present condition; and that their defects are becoming more dangerous every day: but still, with the exception of our own, we know of no great country whose institutions we prefer; and we doubt whether there is one of our readers who would not rather be an Anglo-American than a Frenchman, a Spaniard, an Austrian, a Russian, or a Prussian.

Again, we may think that she boasts too much of the happiness and intelligence of her people. We may taunt her with her three millions of slaves, and with the mobs of her towns, and the ruffians of her borders. But no great community must be judged by its least fortunate portions. Ireland is not a sample of the British islands, nor Connaught of Ireland. And, after making all the deductions from the general average prosperity which are required by the vices and miseries of a comparatively small portion, we must admit, that the fourteen millions of Anglo-Americans form a community enjoying more

comfort and more intelligence than any other equally numerous population.

The rapidity of growth on which America dwells with so much complacency, is a statistical fact supported by unquestionable evidence. The reasonableness of her anticipations of further and proportionate advance, is of course a fair subject of controversy. If her numerous States, differing as they do in many respects as to their institutions, their feelings, and their interests, should preserve their union—if neither war, nor faction, nor resistance to taxation, should destroy their credit, and arrest the improvement of their vast but imperfectly subdued territories—if slavery be gradually extinguished, or confined within limits much narrower than those over which it now extends—if all these contingencies turn out in her favour—the progress of America may be as rapid and as great as she anticipates. Those who are now living may see her possessing a hundred millions of people, irresistible in her own hemisphere, and a match for all that could be opposed to her in ours.

But has she a right to assume, as she uniformly does, that all these chances *will* turn out in her favour? Is not a contrary supposition possible as to all, and probable as to some? And to what extent, in the event of any one or more of these chances turning against her, is her progress likely to be stopped or retarded? These are questions which it would require a volume to discuss; we suggest them as indicating the grounds on which we think that America is open to the reproof, that she over-estimates

her future prospects, bright and even dazzling as those prospects certainly are.

The vanity of America is notorious; and yet, subject to one exception, we doubt whether it much influences her conduct as a nation. She is so much accustomed to self-adulation, that she does not value the moderate applause which is to be obtained from other nations; and she has so perfect a reliance on her own wisdom and virtue, that their disapprobation excites her pity for their ignorance. Few of her public acts can be traced to her desire to obtain the admiration of foreigners, or to avoid their censure. But to this general statement there is, as has been remarked, one exception. There is a nation by whom America is anxious to be esteemed—or, to speak more correctly, to be admired and feared—and that is England. She takes the opinion of England from sources utterly undeserving of credit. She reads what is read by none of the enlightened classes in England—the trash of the Ultra-Tory newspapers; believes that a hired editor speaks the opinions of a party in the State instead of those of a party in the shareholders of a journal; and then fancies that she is undervalued in England—that we do not appreciate her power, that we are careless of her friendship, and almost indifferent to her hostility. And she thinks that by assuming a bold, or even a threatening tone towards England, she will obtain our respect, and perhaps alarm our prudence.

These views are wrong from beginning to end. England thinks highly of America. She disapproves, indeed, of

many of her institutions, and so do the most intelligent portion of the Americans. A highly-accomplished candidate for the Presidency comes forward as the proposer of wide organic changes.* England admires her energy, her perseverance, her courage, her skill—in short, she admires a character naturally, we may say necessarily, in many respects resembling her own. There is no country with whom she is so desirous to keep on good terms, and certainly none with whom she would so much dread a war. And with ample reason. No two countries are so useful to one another in peace, or could do one another so much mischief in war; with the additional misfortune, that all the damage the one inflicted on the other would recoil on herself.

On the other hand, England is naturally intolerant of all faults which differ from her own. She is so little accustomed to swagger or to boast, that she views such exhibitions from others with a mixture of surprise and disapprobation. What America means for spirit, England sometimes considers rudeness or rusticity. When America thinks that she must be admired for the courage with which she vindicates her rights, England wonders that she should think it worth her while to quarrel about trifles. When America boasts that she has been smart enough to overreach us in a negotiation, we only regret that she is not sufficiently educated to be honest, or even to wish to appear to be so. If America cared less about the opinion of England, or did not look for it in the columns of newspapers, or knew better how our respect is to be

* See General Scott's Address, 1841.

obtained—if she knew that the virtues which we most prize are equity, integrity, and moderation—she would have avoided some of her disputes with us, and would have diminished the length and the danger of some others.

Compared with most other nations, America is not ambitious. She desires, indeed, to increase her power, but rather by the increase of her wealth and the spread of her population over the vast wilderness of which she is the undisputed owner, than by the extension of her influence or the enlargement of her territory. This advantage she owes mainly to her constitution. It makes no provision for the permanent government of a conquered territory as a dependency. Such a territory could not be a dependency on any single State, nor, in the present state of party feeling, would it be suffered to be a dependency on the Federal government. It must be incorporated into the Union. Every such incorporation affects the balance of power between the North, the South, and the West. It adds to the Senate and to the Representatives. It may influence a Presidential election. It must always, therefore, have its opponents; and the fear of such an opposition operates as a sedative on the statesmen of America, and has occasioned her to be less aggressive than her power and her republican institutions would naturally have rendered her.

We have already stated, that we do not consider as parts of the public conduct of a nation the unauthorised enterprises of a portion of the community. The attacks on our Canadian frontier, and, generally speaking, the

encroachments from Maine on the disputed territory, were acts of this kind. They were private speculations for the purpose of individual gain. That they were not more effectually repressed by the American government is a proof of its weakness, and shows deep-seated defects in her institutions; but is no proof of ambition.

In fact, if America were as ambitious as France, she would by this time, unless previously dismembered by an unsuccessful war, have reduced the greater part of the western hemisphere to direct dependence on her power, or to subservience to her influence. What resistance could Uruguay, or Colombia, or Buenos Ayres, or Peru, or Chili, or even Mexico or Brazil, have opposed to her arms, or, if she preferred that weapon, to her intrigues? How easy, again, would it have been for her, if she had so thought fit, to mix in European politics—to require, for instance, to be heard on the Eastern Question, and to urge her pretensions by hinting the value of her maritime cooperation? That she has resisted these temptations is fortunate for her immediate happiness and for her eventual greatness. It has enabled her to employ, as the elements of future wealth and power, resources which other nations have wasted in armaments and demonstrations. Yet if the American people had been deeply infected by the madness of ambition, no good sense on the part of their rulers would have been able to restrain them.

But though America is less ambitious of territorial aggrandisement than most other great nations, she is

much more so than in her peculiar situation is wise. In reality, all such ambition on her part is folly. Her present territory is too large; the dispersion, not the concentration of her population, is her great obstacle and her great danger. By a mixture of violence, intimidation, and bribery, she half purchased and half extorted Florida from Spain. We doubt whether, if Canada were to offer herself, she would be refused. We doubt whether, if Canada were to throw off her connection with England, America would willingly allow her to exist as an independent republic. The ambition of America, though not great *positively*, is, relatively to her real interests, excessive.

Her treatment of Texas is a specimen of her conduct where she is not restrained by fear.

Texas was the most eastern province of the vast kingdom of New Spain. It was separated from Louisiana by the Red River and the Sabine to the east and the north, and from Coahuila and Tamaulipas, also provinces of New Spain, by the river Nuees to the east. Its extent is about 160,000 square miles, nearly twice that of Great Britain.

When, in 1821, Mexico became independent of Spain, the population of Texas was very small. With the exception of the Bravos or unsubdued Indians, it probably did not amount to 3,000 persons. Its climate and soil, however, attracted immigrants from the United States. Some of them were lawless adventurers, a sort of land-pirates, whose object was to seize on the country, in de-

fiance of the Mexican government. Such were a band, who in 1821 invaded it under one Long, and proclaimed themselves as constituting the independent republic of Texas; and another band, who, in 1826, made a similar attempt under the guidance of a man named Edwards. Both of these piratical invasions were suppressed by the Mexican government.

More peaceful, however, but, as the event showed, more dangerous, strangers entered as colonists. In 1821 and 1823, two Austins of Missouri, father and son, on the plea that the Roman Catholics were oppressed in the United States, obtained permission to introduce 300 Roman Catholic families, who brought with them their slaves.

When Mexico created her Federal constitution in 1824 Coahuila and Texas were formed into one State. In 1827 that State adopted a constitution forbidding the importation of slaves, and giving freedom to all persons born after its date; in 1829 the Central government emancipated all the slaves in Mexico.

From that time the southern portion of the United States, then the political masters of the Union, appear to have resolved to appropriate Texas, in order to restore it to slavery.

In 1827, Mr. Poinsett, their minister in Mexico, offered to purchase from Mexico all Texas and the portion of Coahuila between the Nuees and the Rio Grande del Norte, for a million of dollars. In 1827 he enlarged his offer to five million of dollars—the motive being that

out of Texas five or six more Slave States might be added to the Union. The Mexican government refused to sell. Recourse therefore was had to colonisation, as a means of insurrection. The State legislature, composed chiefly of Anglo-Americans, made large grants of land to their American fellow-citizens. In the cotemporary atlases, nearly the whole country is divided into grants, each at an average as large as Ireland. They were sold to joint stock companies, established in New York and other American cities, who resold them in smaller lots, as big, perhaps, as the Isle of Wight. Among the directors were public men, the value of whose shares depended on the separation of Texas from Mexico. Sydney Smith amused the world some years ago by his description of an insolvency, measured by degrees of latitude. This was robbery on a still greater geographical scale. As early as the year 1827, Sir H. Ward, then our minister in Mexico, predicted that, if the Mexican government allowed one of her provinces to be thus peopled by Americans, it would soon cease to belong to her.* And in 1830 the government became alarmed, and prohibited immigration from the United States. This of course excited the indignation of the Americans. At a Mississippi election, the following questions were put to the candidates:—

'Your opinion as to the acquisition of Texas, and how? Whether by force or by treaty? Whether the law preventing the immigration of Americans is not evidence

* Mexico in 1827. Vol. II. p. 586.

that that province wishes to secede from the Mexican government? Whether we ought to give the seceders military assistance? And the effect on the planting interest of the acquisition of Texas?'

America threatened war unless the prohibition of immigration were repealed. The poor weak government of Mexico submitted, allowed the immigrants to crowd in, and, in defiance of its law, to bring with them their slaves. Still the foreigners, though forming the great majority of the inhabitants in Texas, were in a minority in the joint legislature of Coahuila and Texas. They demanded separation, and a constitution of their own, with slavery as its basis. Mexico refused. They created their separate legislature in defiance of her, repulsed a small body of Federal troops sent to crush the insurrection in its beginning, and covered the United States with agents, publicly enlisting soldiers, and purchasing and forwarding military supplies. Mexico protested against this violation of neutrality. President Jackson answered by a proposal to purchase Texas, New Mexico, and the greater part of California, and by a vague promise to do what he could to restrain his countrymen. Nothing however was done, and the States determined that nothing should be done. Ohio, on the motion of the district attorney of the United States, resolved 'That no law, human or divine, except such as are framed by tyrants, and for their benefit, forbids our assisting the Texans: and such law, if any exists, we do not, as Americans, choose to obey.'

We copy some of the advertisements of the time :—

Who will go to Texas? Major Harvey is authorised by me to receive and enrol volunteers for Texas, and will conduct them about the 1st of October next, at the expense of the Republic of Texas.

J. P. HENDERSON,
Brig.-Gen. of the Texan Army.

Three hundred men for Texas. Gen. Dunlop is about to proceed to Texas with the above number of men. Every man is completely armed.

Thus supported, the Texan foreigners on March 2, 1836, declared themselves an Independent Republic, with slavery as its fundamental institution. Of the fifty-seven persons who signed the declaration of Independence, fifty-three were immigrants from the American Slave States.

Mexico attempted to suppress the rebellion, was defeated by a force mainly consisting of American immigrants, and Texas established its independence, which is to last until the southern portion of the Union shall feel itself strong enough to absorb it.

The public conduct of America is little influenced by fear, perhaps not enough to give her prudence. She has twice maintained a war against the most powerful nation in the world. At the time of her first war, her population and her wealth were less than one-fifth of their present amount—at the time of her second war, they were less than one-half; and she came out of the first war with triumph, and out of the second without defeat. It is natural that now, with her resources doubled, she should believe herself invincible. She does not recollect—few

nations do recollect such lessons—that in both these wars there were periods of extreme peril.

Nor does she sufficiently bear in mind that her increase in population, while it has increased her power, has materially increased her dangers. The vast States constituting the Union, most of them as large, and many of them as populous, as the average of an European kingdom, do not submit readily to the central authority, even in peace. From year to year the north, the south, and the west are becoming more dissimilar in their feelings, in their occupations, and in what they believe to be their interests. It is true that war might consolidate them. But is it not equally true, and is it not much more probable, that war might separate them? Again, her revenue is deficient. The last act of Congress was an expedient which seldom succeeds even in effecting its immediate objects, and which, whether it so succeed or not, always inflicts great and permanent evils on the community which is forced to adopt it—a general increase of import duties. Where would a war budget be found for a country reduced to such an extremity in peace?

In fact, America has nothing to gain by war, and everything to lose. Her last war gave her as much glory by land and by sea as she can wish for; and the extension of her territory would, as we have already remarked, be an evil. All the results of the most successful war would be to throw her twenty-five years back. But the effects of a prolonged and calamitous contest are not to be told, perhaps not all to be foreseen. ΄ΕΤΡΗΣΕΙ ΤΑ ΣΑΘΡΑ ΤΩΝ

ΕΚΕΙΝΗΣ ΠΡΑΓΜΑΤΩΝ ΑΤΤΟΣ 'Ο ΠΟΛΕΜΟΣ.

The south would lose her market, the north her commerce, the currency would fall to assignats; neither the Federal union, nor even the freedom of many of the States, would be secure. All this, of course, is seen on that side of the water even more clearly than on this. And we have no doubt that, if the destinies of America were ruled by the same classes as those which govern in England, her prudence would be equal to our own. But, unfortunately, the suffrage, and, to a great extent, the real government of the Union, is vested in classes comparatively uneducated; and likely, on every occasion, to miscalculate the danger of a struggle, or the worth of a dispute. Party spirit and misrepresentation, acting on electors ill fitted to estimate the merits of international questions, might return a House of Assembly pledged to measures as ruinous to themselves as to their neighbours.

The public morality of America is not below the generally low average of that of powerful States. We have already remarked her comparative exemption from the great cause of national immorality—ambition. She is wise enough to make few treaties, and honest enough to keep them. Perhaps the least defensible part of her conduct is her behaviour towards Spain—a country which, after having in her day of power systematically disregarded justice and even mercy, seems now destined, by what may appear to be a just retribution, to suffer wrongs almost equal to those which she formerly inflicted. The occupation of Pensacola and St. Augustine, its avowal by

President Monroe, and its sanction by Congress, are precedents which America would gladly obliterate.

Her great moral fault is her litigiousness. She is always ready to stand on her extreme rights, and to refuse to allow a legal claim to be equitably arranged. We shall show, in a future portion of this article, that it is to this defect in the American public character, and to a defect of an opposite kind in our own, that the unhappy disputes between the two countries are principally owing. We are inclined to ascribe this quality, as well as her want of prudence, to the defect in her institutions, which we have already pointed out—the preponderating influence of the comparatively uneducated portion of the people.

The great cause of litigiousness is an inability to compare the certain costs of the contest with the value of the chance of obtaining the disputed object. In proportion only as a man is educated, is he able to enter into this calculation, and willing to act according to its result. Sir Walter Scott has well represented his shrewd and amiable, but uncultivated, Dandie Dinmont, as willing to peril in a suit for a few acres of barren moor ten times or twenty times their value. Precisely similar was the conduct of America in rejecting the award of the King of the Netherlands on the Boundary Question. She could not pretend that there was any loss of honour in complying with the decision of a tribunal which she had joined in selecting; and every intelligent American must know, that the commercial loss occasioned during one year by the insecurity which the dispute produced, is worth twice

as much as the difference between the value of the territory which she claims, and that which the award gave to her.

America has little sympathy. To use the words of one of her most distinguished statesmen—'She contemplates the wars that drench Europe in blood as a calm, if not a cold and indifferent, spectator.'* She pays, of course, more attention to the affairs of her own hemisphere; but so far, and so far only, as they directly affect her own immediate interest. It is difficult to blame or even to regret the indifference of America, when we recollect what have been the effects of what is called national sympathy. When a nation wishes to weaken a rival, or to dismember and seize the territory, or to subjugate the councils of a neighbour, the pretext is always a generous sympathy with some enemy of the rival, or with some party, or perhaps some province or dependency of the neighbour. Sympathy with Mehemet Ali and Egypt was the pretext of France when she wished to partition Turkey; sympathy with Ferdinand and with the noble Spanish nation, a prey to a knot of conspirators, was her pretext for destroying Spanish liberty in 1822. It was out of sympathy that Prussia, Russia, and Austria first protected one portion of the Polish nation against another, and then appropriated the whole. Sympathy sometimes for an oppressed people, sometimes for an injured ally, sometimes for an excluded successor, have gradually

* See Mr. Clay's Speech on the Emancipation of South America. March 24, 1818.

attracted the English dominion from the Ganges to the Tigris,' and from Cape Comorin to Thibet. Perhaps America may be too apathetic. It seems to us probable —though from our imperfect knowledge we speak with great diffidence—that if she had interposed her advice and her mediation, she might have been able to diminish the anarchy and war which have laid waste almost every State between her frontier and Cape Horn; and we cannot but think that, if she had felt more for the sufferings of Africa, she would have given more cooperation to our efforts to prevent her flag from covering the slave trade. But we repeat that, with respect to a passion so liable to excess, we ought to deal very leniently with what we may consider a deficiency.

In regard to the angry passions, America is irritable. She is apt to take offence where no insult was intended, and to consider herself injured when the treatment which she applies to third parties is adopted towards herself. It is possible that this sensitiveness may be connected with her national growth, and with the change which every year makes in her relative position. Between thirty and forty years ago, the period at which most of those who are now her principal statesmen received their political education, America was weak, and was supposed to be much weaker than she really was; and she was treated as weak powers always have been treated, and always will be treated, until the tone of public morality has been materially improved. In the fierce struggle between France and England, her rights were disregarded

by both parties. Now that she is one of the great empires of the world, with only one civilised nation superior to her in territory, and only four superior to her in population, she ought to feel how improbable it is that any other power will wantonly offend her. She ought to exhibit the magnanimous candour and forbearance of conscious strength. But though America is irritable, she does not bear malice—a defeat does not rankle in her mind as a subject of revenge at the distance of half a century.

The last nation whose character we have to consider is England—using the word England as a concise appellation for the nation inhabiting the British islands. We shall endeavour to perform the task fairly, though aware of the great difficulty of preserving real impartiality on the subject, and of the danger, perhaps we might say the certainty, that the portrait, if it be really impartial, will be unpopular.

England has always been accused of pride. That she estimates herself very highly is obvious; and she would be a strange exception in the history of nations, if she did not overrate both her positive and her relative advantages. She is proud of her power, of her wealth, of her glory in arms, of her institutions, and of her civilisation. In the two first points we do not believe that she is guilty of exaggeration. Indeed, both her power and her wealth are generally estimated more highly by foreign statesmen than by her own. Her military and naval triumphs she may probably overrate; but not dangerously

to herself or offensively to her neighbours. Nor can she be said to be too proud of her institutions, when we see, that, with the exception of monarchy, there is not one in which large portions of the community do not demand fundamental changes. Her civilisation she does over-estimate. She is not sufficiently aware of the misery and degradation of numerous classes of her inhabitants. She is only beginning to find how far she is behind-hand in architecture, in painting, in sculpture—in short, in almost all the fine arts. She does not know how inferior her education is to that of many parts of America and of Continental Europe. She does not see how much they have advanced while she has remained stationary, or proceeded more slowly. Still less does she perceive the evil, or the unchristian spirit, of the intolerance which separates her numerous religious sects. In her religion, indeed, hatred is somewhat mixed with love, and doubt with belief. But the doubt is latent, and is to be inferred principally from the bigotry to which it prompts. Doubt is unpleasant; most Englishmen think it sinful. They are afraid to meet it in the only way by which real conviction can be obtained—by severe impartial examination. They try to stifle it. They avoid the books and the conversation which may excite or strengthen it; they wish if possible to ignore it.

Thence their dislike of those who deny, or even question, the doctrines which they themselves are anxious to believe. When a man has made up his mind, on any matter, after full and impartial examination, he is tolerant

of dissent, because it does not influence him. He has considered its grounds, and found them to be insufficient. A free-trader smiles at the trite fallacies of a protectionist. But when he has a lurking doubt whether he may not be mistaken—a doubt which he cannot conquer, because he is afraid to look into it—every opponent encourages the enemy within. His faith being weak is, like all weak things, irritable, and the irritation shows itself in the miserable disputes, feuds, and hatreds, which split the inhabitants of the British islands into hostile sects, and, among their other mischiefs, deprive us of general and systematic education.

But with all these errors—and they are very great—we are inclined to think that England approaches more nearly to correct self-estimation than either of the two nations with which we have compared her.

Pride has generally been supposed to be inconsistent with vanity. It is certain that the same person seldom exhibits both on the same subject. To be the object of admiration is pleasing, partly in itself, and partly as an evidence of the possession of certain qualities; and, in both cases, the pleasure depends greatly on our estimate of the admirer. As all estimation is relative, the higher we place ourselves the lower we must place all others, and the lower must be our value for their opinion. It follows that a person who thinks very highly of himself is generally careless of the opinions of others; he does not want their evidence, and he considers them as his inferiors. England, therefore, believing herself to be clearly the

first nation in the world, is naturally indifferent to the testimony of others to a truth which she holds to be obvious.

One important consequence is, that the foreign affairs of England seldom attract the attention of the nation. All that the people ask from the minister is, that he keep them at peace. He need not fear of being accused at home of wanting spirit or wanting enterprise; they do not require him to be always acting a part; to feed the national vanity by restless endeavours to extend the influence and exhibit the superiority of the country; to be ready to waste millions, merely to show to Europe that he has millions to waste. They demand no premature exposure of the progress of his negotiations. His treaties do not depend for their ratification on the squabbles and animosities and jealousies of our domestic parties. The foreign policy of England, therefore, so far as it depends on the will of the nation, is exempt from many misdirecting influences.

This is a great advantage, but, like most advantages, it has its corresponding inconveniences.

In the first place, it renders our foreign policy more dependent than any other part of our administration on the character of the statesman for the time being conducting it. The Home Office, the Colonial Office, the Admiralty, and the Horse Guards, have to deal with matters, to which the whole British public is attending. They are prompted, and warned, and impelled, and checked at every step. Their conduct is mainly the result

of the pressure of conflicting influences. It bears little the impress of individual character. No one could infer from the measures adopted by the Colonial Office at a given time who was the minister who then held its seals.

But if a stranger unacquainted with the history of England during the last forty years, were fully and accurately informed as to the moral and intellectual qualities of the men who during that period have been our foreign secretaries, and were then told what, from year to year, had been the course of our foreign policy, he would often be able to attribute an important measure to its real author. Intervals of what may be called by some activity and vigour, and by others mischievous meddling and interference, are interspersed among others, in which England appears rather a spectator than an actor.

Sometimes we are steered by a man of sober wisdom, who, though he sees much to disapprove and much to regret in the conduct of other governments towards their neighbours, towards their subjects, and indeed towards ourselves, does not remonstrate against that he cannot prevent, does not preach to those who will not listen, and, if they did listen, could not understand; does not threaten when he knows that he will not be allowed to strike, and does not strike unless the object to be attained be worth the exertion.

Sometimes we are in the hands of a man of restless irritable activity, who is miserable unless he can set right every thing in every country; who lectures foreign

governments, joins in their party intrigues, assumes protectorships, entangles us in alliances, scatters over the whole world the means of injuring us, and is morbidly sensitive to the shadow of a wrong or a disrespect.

Between the extremes of caution and recklessness, of timidity and rashness, of vexatious interference and apathy, there are of course many degrees, among which the foreign policy of England is too apt to oscillate according to the temper and ability of her minister.

In the second place, in the absence of an amphictyonic tribunal, two checks only exist which can prevent one nation from pursuing, to the injury of the rights and of the welfare of another, the course which, after calculating all its risks—war, retaliation, and enmity—she thinks it would be for her own interest to adopt. These are—her respect for public opinion and her sense of justice. It is obvious that, in proportion to a nation's value for the opinion of others, will be the force of the former check. It is true that, in the defective state of public morality, to which we have often referred, this check is always weak, and often inoperative. It is even true that, where the vanity of a nation is thoroughly ill-placed, that very vanity may misdirect her conduct. She may covet admiration for her spirit or her power, at the expense of her virtue. The feeling of France is an example; but this is an extreme case. Bad as nations are, they generally desire to be thought generous, or at least equitable. Such is the desire of England, so far as she feels any solicitude as to her character abroad. In proportion,

therefore, to the slightness of her solicitude, is the slightness of one of the two checks to her misconduct.

The same state of feeling has a tendency to weaken the other check—her sense of justice.

A candid man engaged in a dispute, though he may feel certain, as he considers each individual point, that he is right, seldom ventures to act on his own unaided judgment. He is aware that it is fallible, that it must be biassed by his interests and by his prejudices, and that it is improbable that he has given due weight to all the reasoning of his opponent. If the matter is serious, therefore, he asks the advice of his friends. If it be likely to lead to a lawsuit, which is almost equivalent to a war among nations, he takes the opinion of counsel. As far as he can, he avoids being judge in his own cause. A man who neglects these precautions is arrogant; for it must be recollected that arrogance does not imply intentional injustice. Indeed an arrogant man generally believes himself to be a model of impartiality and forbearance; and the more firmly he believes this, the more probable it is that he is mistaken—the more sure he is that he must always be right, the more likely it is that he will frequently be wrong.

Now, a nation is much more exposed to this danger than an individual. She has no friends to consult, no tribunal to resort to. There is one mode, and one mode only, by which she can correct the necessary partiality of her own views of her own conduct: and that is, by ascertaining the impression which it produces on third

parties. If she neglect this corrective, and if her force should be such as generally to enable her to carry her designs into execution, it is scarcely possible that her pride should not sometimes degenerate into arrogance, and her arrogance impel her to injustice.

From these accusations we cannot declare England free. Those who examine her conduct and her correspondence during the last fifty years, will find cases in which she has assumed a tone which she would not have endured if used towards herself; cases in which she has stretched the right of a belligerent to the utmost verge of the letter of that harsh law, and far beyond its spirit; cases in which she has disregarded the letter of international law, where it interferes with what she deems, very justly, a great and laudable object of her own; and cases where she has set at defiance both the letter and the spirit of that law, because it suited her own convenience to do so.

The more serious part of this charge will be considered when we treat of her character as a belligerent; but her endeavours to suppress the African slave trade afford a useful illustration of the degree to which she has sometimes allowed the end to justify the means.

During the eight years which elapsed between the prohibition of that trade by England and by the United States, and the general peace, and especially in the latter part of that period, its suppression was easy. England was entitled as a belligerent to visit and search the vessels of every country; and in fact scarcely a flag ever appeared in the African seas unless it were English, or

flying by the permission of England. But it was believed, and subsequent events have fully justified the belief, that the feelings of England with respect to the slave trade would meet with weak sympathy in the rest of Europe; that as soon as peace rendered the ocean again the common property of all mankind, it would again be used for the purposes of the slave trade; and that the vacancy occasioned by the secession of England and America from the trade would be instantly filled up, and much more than filled up. To prevent this, England inserted in her first treaty of peace with France—a treaty signed only a few weeks after the entry of the allies into Paris—an engagement on the part of France to endeavour to induce all other Christian powers to discontinue the trade, and a positive promise that France herself would terminate it within five years. She obtained from America an agreement to use her best endeavours to procure its general abolition. She obtained from the powers constituting the Congress of Vienna, a declaration that the trade is repugnant to public morality, and ought to be abolished; 'but not without a just regard to the interest, the habits, and the prejudices of their subjects.' And her definitive treaty with France, that of November 1815, contained a recital that each of the contracting powers had, in their respective dominions, prohibited, without restriction, their colonies and subjects from taking any part whatever in the traffic.

These were vague stipulations, and the proposal of the Duke of Wellington, that they should be enforced by a

maritime police, authorised to ascertain acts of slave-trading by visitation and search, was rejected. In fact, with the exception of England and the Netherlands, few of the European nations possessing colonies appear to have been in earnest. They were ready to denounce the trade as inhuman; but they would take no active measures to suppress it, nor even give any cordial support to such measures when taken by England. The recital in the French treaty was a positive falsehood. France had *not*, at the date of the treaty, prohibited her subjects from taking part in the traffic. She did not legislate on the subject until the year 1817, and even then the prohibition was partial. It prohibited the importation of slaves into the French colonies, but left her subjects at liberty to prosecute the carrier slave trade to any extent which they might think proper.

England acted as if the Duke of Wellington's proposal, instead of having been decidedly rejected, had been conceded. She authorised her cruisers to seize *all vessels* prosecuting the African slave trade.* In obedience to these instructions, a British cruiser, on March 11, 1816, attempted to visit a French vessel apparently engaged in the slave trade, was resisted, attacked her, captured her, after an action in which twenty men were killed and wounded on the British side alone, sent her into Sierra Leone, and obtained her condemnation in the

* See the instructions given to the British cruiser 'Caroline,' dated January 28, 1816. Published in the Appendix to the case of the 'Louis.'—2. Dodson's *Admiralty Reports.*

provincial Court of Admiralty. The French owners appealed to the High Court of Admiralty, then presided over by Sir William Scott. We extract a portion of the reasoning on which he reversed the decision of the Inferior Court, and decreed restitution of the ship:—

It is said that every nation has a right to enforce its own laws, and so it has, so far as it does not interfere with the rights of others: it has no right to visit or search the apparent vessels of other countries on the high seas, in order to institute an enquiry whether they are not in truth British vessels violating British laws. No such right has ever been claimed, nor can it be exercised without oppressing and harassing the lawful navigation of other countries; for the right of search, when it exists, is universal, and will extend to the vessels of other countries, whether employed in slave-trading or in any other act. It is no objection to say that British ships may thus elude the obligations of British law. If even the question were reduced to this, that all British ships should fraudulently escape, or all foreign ships be injuriously harassed, Great Britain could not claim to embrace the latter alternative. You have no right to prevent a suspected injustice to another, by committing an actual injustice of your own.

It is said, if this be not permitted, it will be extremely difficult to suppress the traffic. It will be so; but the difficulty of the attainment will not legalise measures otherwise illegal. To press forward to a great principle by breaking through every other great principle that stands in the way—to force the liberation of Africa by trampling on the independence of Europe—in short, to procure an eminent good by means that are unlawful—is as little consonant to private morality as to public justice. A nation is not justified in assuming rights that do not belong to her, merely because she means to apply them to a laudable purpose; nor in setting up a moral crusade of converting other nations by acts of unlawful force.'*

* The 'Louis.'—2. Dodson, 210.

The arguments of Sir William Scott proved that England was required, by expediency, and even by justice, either to abandon her attempts to suppress the foreign slave trade, or to obtain the acquiescence of foreign nations in her treatment of their subjects. A few months after, in 1817, she purchased from Spain, at the price of 400,000*l.*, a treaty by which a right of visitation and search was given to the government vessels of each country, to be exercised in the merchant vessels of the other, 'when suspected, upon reasonable grounds, of having slaves on board, acquired by an illicit traffic.'

Earnest endeavours were made to obtain a similar concession—if concession it could be called—from France. But when the Duke of Wellington made the proposal at the Congress of Verona, the answer of France was more than a mere negative. She not merely rejected the proposal, but added, that 'if ever it should be adopted, it would have the most disastrous consequences: the national character of the two peoples, French and English, forbids it.' In the meantime the French slave trade was flourishing. It was weakly repressed by the government; and, we regret to add, that it was viewed by the people with little disapprobation. It appeared to them to be a means of acquiring and improving the great objects proposed to their ambition by Napoleon—ships, colonies, and commerce. They believed it to have been one of the foundations of the commercial prosperity of England, and ascribed her efforts for its suppression to her national jealousy. The English cruisers, sometimes from mistake,

and sometimes from an indignation with which it is impossible to avoid sympathising, continued from time to time to interrupt it. One of the most remarkable instances was that of three French vessels, the 'Vigilante,' the 'Betsy,' and the 'Ursule,' which were discovered in the river Bonny laden with more than nine hundred slaves, attacked by the boats of an English squadron, captured after a severe action, the slaves liberated, and the ships carried as prizes into Portsmouth and Plymouth.

The Revolution of 1830, however, produced one of those brief periods of excitement during which France desires to be admired for something better than power and military glory. She was anxious for the approbation and for the support of England, and the result was the Convention of 1831, giving a mutual right of visitation and search. From that time the flag of France has disappeared from the slave trade; and the change has been effected without any of the disastrous consequences predicted by the government of the Restoration. Scarcely a complaint has been made by any merchant belonging to either nation of any improper proceeding under the treaty.

At length Portugal was the only European state with which no satisfactory arrangement had been made. In 1815, she had undertaken immediately to confine the slave trade to the supply of slaves to her own possessions in the Brazils, and eventually to abolish it entirely; and she agreed to permit a right of visitation and search north of the line. For this treaty England paid to her 600,000*l*. The Brazils separated from her, and prohibited the trade.

We required Portugal to fulfill the treaty, to prohibit her subjects from engaging in the slave trade, and to make the prohibition effectual by conceding to us a more extended right to visit and search slave-trading vessels bearing her flag, and to send them to an admiralty court constituted of Portuguese and English judges for adjudication. She refused; and the natural consequence was, that the trade was carried on to an enormous extent, both by Portuguese vessels and by vessels assuming her flag.

The determined refusal of Portugal to fulfill her engagement was a lawful cause of war, since, in the present state of the world, war is the only sanction by which nations having no common superior can compel adherence to treaties. Instead, however, of proceeding to this extremity, England pursued a course harsher than even war in appearance, principally from its unusualness; but which had the effect of producing all the results that war could have effected, and of producing it without the previous suffering. The 2nd and 3rd Victoria, cap. 73, was passed, which, after reciting that Her Majesty had been pleased to issue orders to her cruisers to capture Portuguese vessels engaged in the slave trade, enacts, that it shall be lawful to detain, seize, and capture every such vessel, and to bring the same for adjudication into any British court of admiralty, as if the vessel were British; and that it shall be lawful for any British admiralty court to condemn such vessel: That every such vessel shall be liable to seizure, detention, and condemnation, if there be found in her equipment more water-casks, mess-tubs,

matting, or provisions than might probably be wanted for the use of her crew; or certain other articles—such as shackles, handcuffs, or planks for a slave deck, which are used only in slave-trading: And lastly, that such vessels shall be taken into Her Majesty's service or broken up.

In the meantime, England had made treaties for the suppression of the slave trade, giving mutual right of visitation and search, with all the states of the western hemisphere except the United States; or, as we have usually termed that government in this article, America.

Our readers are probably aware, that all questions connected with the right of visitation and search, or with slavery, are sore subjects in America. The Northern States, forming the seafaring portion of the Union, suffered so severely from the conduct of both the belligerents during the war, that they associate with the idea of a right of search that of insolence and oppression; and they have professed doctrines relating to it which are repudiated by England, and are not those of the existing law of nations, but which they do not wish either to retract or to press. On the other hand, the Southern States, though caring less about maritime law, are anxious to stifle every discussion having a reference, however remote, to slavery. They know that the Northern States are opposed to that institution on political, on moral, and on religious grounds, and that they urge their opposition with the uncompromising, we had almost said the unscrupulous, vehemence which is peculiar to a religious question. Yet the inhabitants of the South believe slavery to be essential to their existence.

They believe that its abolition would devote the Whites to massacre, and even the Blacks to destruction, by civil war, intemperance, and famine. Knowing that discussion with their Northern brethren only widens the breach and exasperates the disputants, they strive to keep the whole subject of slavery, and everything connected with it, out of sight; and, though they are opposed to the African slave trade, their sense of its enormity is weakened by their familiarity with their own internal slave trade between State and State, and by their recollection of the period when they or their fathers were dealers in imported negroes.

When we add to the difficulties occasioned by this state of feeling, the litigious, jealous, irritable, and suspicious character of America, we cannot wonder at the ill-success of our attempts to obtain her full cooperation in the suppression of the trade. At first, indeed, the business appeared to be easy. It was not necessary, as it has been in France, to educate the public mind, and to convince the people that an immoral trade ought to be abandoned, even if it were a profitable one. We had not to complain of the inefficacy of her laws, or of the corruption or unwillingness of her tribunals. America preceded us in the abolition of the trade, and enforced that abolition in her own courts as honestly as we did. In the addresses presented to the Crown by both Houses of Parliament in 1821, earnestly entreating his Majesty to renew his efforts to obtain the cooperation of France, the conduct of America is referred to as a model to ourselves, and as a ground for exulting in our common origin.

But as we gradually deprived the slave-traders of the use of other flags, they endeavoured to usurp that of America. America did not think fit to incur the expense of maintaining a maritime police for their detection. We had the police, and requested to be allowed to employ it. And then began the discussions as to visitation and search, which still remain unconcluded. In 1821, a committee of the House of Representatives reported, that a mutual right of search was indispensable to the abolition of the trade. But the President, Mr. Monroe, refused to admit any negotiation on the subject. In 1822, a committee of the Senate concurred in the opinion which had been expressed by the House of Representatives, and earnestly recommended its being acted upon. 'Not doubting,' to use their own words, 'that the people of America have the intelligence to distinguish between the right of searching a vessel on the high seas in time of war, claimed by some belligerents, and the mutual, restricted, and peaceful concession by treaty suggested by your committee, and which is demanded in the name of suffering humanity.' The President either doubted the intelligence attributed by the committee to his countrymen, or wanted that intelligence himself; for he continued his opposition to the opinion and recommendation of both branches of the Legislature. In 1824, however, his scruples had been overcome. A treaty giving to the armed vessels of each country a right to board and examine vessels bearing the flag of the other, on suspicion of their being engaged in the slave trade, and to send them, if the

suspicion appeared to be well founded, to their native tribunals for adjudication, was signed by the plenipotentiaries of England and America. But in the meantime the Senate, in the intricacies of American politics, thought it convenient to differ from the Executive. It sacrificed, as American legislatures habitually do, humanity, good sense, and good faith to party animosity. It refused to ratify the treaty. And thus the matter stands. Each branch of the Legislature has separately accepted the measure, but only when it was refused by the other.

In the meantime, the British cruisers treated America as they had previously treated France. They acted pretty much as they would have done if the right of visitation and search, instead of having been refused, had been conceded. They felt that if a vessel, by merely hoisting American colours, protected herself from enquiry, no slaver would sail without a stock of such flags, and all the declarations and laws of Europe and America against slave-trading would become waste paper. When a vessel under suspicious circumstances displayed the American flag, they visited her for the purpose of ascertaining whether she were entitled to bear it. If she proved to be a slave-trader, and could show no plausible claim to be considered an American, they dealt with her according to her real character. But if there were any grounds for believing her to be American, they sometimes dismissed her, and sometimes carried her across the Atlantic, to be proceeded against in the American courts.

The conduct of the American government was marked

by the indecision and inconsistency which belongs to all men who have assumed a principle which they are ashamed to abandon, and yet are ashamed to push to its legitimate consequences. Whenever a lawful American trader was visited and searched by a British cruiser, they complained that their flag had been violated. They announced 'their 'determination that the flag of the United States should 'be the safeguard of all those who sail under it.* That 'they would never consent to their vessels being boarded 'or searched, however qualified or restricted the right 'might be, or under whatever pretence done;† especially 'as the United States have not the means of carrying out 'a maritime police and *surveillance*;' ‡ and that these 'continued violations of the flag of the United States, under 'whatever colour or pretence, cannot be longer permitted.'§ In this view of the case, the offence against America was the boarding a vessel which thought fit to display her flag; and that offence was complete, that flag was violated, whether the vessel bearing American colours were or were not a slave-trader, or were or were not an American. America, however, never whispered a complaint against our capturing Spanish or French vessels, though sailing under American colours. She made no complaint, indeed, of our having captured and sent into her ports

* See Mr. Stevenson's Letter, February 5, 1840, Class 8, Farther Series, p. 40.

† Mr. Stevenson's Letter of February 17, 1840, ibid. p. 44.

‡ Mr. Stevenson's Letter of November 13, 1840, Class D, p. 93.

§ Ibid. p. 95.

American vessels, or vessels supposed to be American, when found actually engaged in slave-trading. Instead of doing so, she requested the captors to remain at New York in order to give evidence. Her naval officers even entered into agreements with ours as to the mode in which our cruisers should deal with vessels bearing her flag. We subjoin a convention for that purpose, which may now be in force in the African seas:—

Commander William Tucker, of Her Britannic Majesty's sloop 'Wolverine,' and senior officer west coast of Africa, and Lieutenant John S. Paine, commanding the United States' schooner 'Grampus,' in order to carry into execution as far as possible the orders and views of their respective governments respecting the suppression of the slave trade, *hereby request each other, and agree to detain all vessels under American colours, found to be fully equipped for, and engaged in, the slave trade*; that, if found to be American property, they shall be handed over to the United States' schooner 'Grampus,' or any other American cruiser: and if found to be Spanish, Portuguese, Brazilian, or English property, to any of Her Britannic Majesty's cruisers employed on the west coast of Africa for the suppression of the slave trade, so far as their respective treaties and laws will permit.

Signed and exchanged at Sierra Leone, this 11th day of March 1840.

(Signed) WILLIAM TUCKER,
Commander of Her Britannic Majesty's ship 'Wolverine,' and Senior Officer west coast of Africa.

(Signed) JOHN S. PAINE, Lieutenant,
Commanding the United States' schooner 'Grampus.' *

In this unsatisfactory, we may say absurd state, the question rests. In practice America allows that we may

* Slave-Trade Correspondence, 1840, Class D, p. 76.

visit and search vessels bearing her flag; but in theory she forbids it. When, in compliance with the practice, we search and detect a slaver bearing her flag, she makes no remonstrance; but if the vessel searched turn out to be a fair trader—a fact which nothing but the search itself can ascertain—she complains of that search as a national offence. And thus, between the refusal of America to adopt principles of equity, and that of England to abide by those of law, the embers of a national quarrel have been lighted, which it will require all the wisdom and temper of Lord Aberdeen, Lord Ashburton, Mr. Webster, and Mr. Everett, to extinguish.

If it were not for the human suffering that would ensue, the easiest mode of getting out of the difficulty would be for us to admit the force of her arguments, and to direct our cruisers to abstain from violating the American flag—that is, to abstain from visiting any vessel that should display it. Of course, it would be immediately hoisted by every vessel—French, English, Spanish, or Portuguese—that thought fit to engage in this most lucrative of traffics. America admits that 'she has not the means of carrying out a maritime police and *surveillance*.' The African seas would swarm with slavers; every one bearing the American flag, and every one assured by that flag of impunity... The execration of mankind, and, not least, that of the people of the United States, would show to the American government the necessity of abandoning a position, in which her only companion, out of the whole civilised world, is Portugal.

As a really practicable solution, we venture to suggest that England should direct her cruisers to visit no vessel showing the American flag, unless convinced that she assumes it fraudulently; and that America should accept, as a sufficient excuse where an American vessel has been visited, a declaration on the part of the visiting officer, that he visited her in the belief that she was *not* American. However sensitive American honour may be, it can scarcely be wounded by an involuntary mistake.

One consequence would be, that America would be obliged to increase the force which she maintains in the African seas. It is now so trifling—consisting, we believe, of a single schooner—that it is utterly inadequate to carrying her own laws against her own subjects into execution; and while the American minister in London was declaring, that under no pretext whatsoever should an American vessel be searched or even visited, the American commander at Sierra Leone was requesting the British commander to detain all vessels under the American flag equipped for the slave trade.

And we trust that a further and far more beneficial consequence would be, that she would join with England in a really earnest endeavour to destroy the slave markets of Brazil, Cuba, and Porto-Rico. We agree with Mr. Forsyth and Sir Fowell Buxton in believing that, while those markets exist, little good is effected by capturing slavers on the African coast. The influence of America in those countries far exceeds that of any other nation. That it has not been exerted for the purpose of suppressing

the slave trade is, as we have already remarked, a stain on the American character.

If the conduct of Portugal, France, America, and England, on the subject of the slave trade, were submitted to the judgment of an impartial spectator, he must visit that of Portugal with unqualified disapprobation. He would probably treat the earlier conduct of France with nearly equal censure, and admit her behaviour in 1831 to be an imperfect atonement. He would lament that America should have allowed her party squabbles, her jealousy, and her litigiousness, to destroy her sense of humanity, her sympathy for Africa, and her respect for the example and for the public opinion of Europe. He would admire the self-devotion with which England has encountered offence, misrepresentation, expenditure of treasure and of life, and even the chances of war, in the hope of preventing evils with which she is acquainted only by report, and of civilising, or at least improving, nations of which she scarcely knows the names. He might doubt whether the means adopted were wise. He might know, indeed, that their failure has been most complete and most calamitous; but he could not deny their generosity. We fear, however, that he must admit that the censure passed by Sir William Scott on her conduct, at its first beginning, has been in some measure deserved during its subsequent progress; and that, in her eagerness to liberate Africa, she has not always respected the independence of Europe.

England has often been considered ambitious. We admit that in India she has been so; and we believe that

such was the inevitable result of her position. A civilised and powerful government, surrounded by semi-barbarous powers, too ignorant to be restrained by fear, and too faithless to be bound by treaty, is always forced by their aggressions to resist, to subdue, to reduce to vassalage, and finally to dismember and absorb them. But we have already expressed our intention to avoid this portion of the conduct of the nations whom we are endeavouring to characterise; since, in their treatment of barbarians, all nations act pretty nearly alike. Our business with England is not as an Asiatic, but as an European, power; and as an European power we believe her to be eminently free from ambition. She feels, of course, the wish for power which is instinctive in every human being, and therefore in every human community; but she desires it only so far as it may be a consequence of her prosperity. She knows that her prosperity depends on the extension of her commerce, not of her territory or of her dependencies. She knows, by bitter experience, that all her acquisitions in India, in America, and in the West Indies, have tended only to render her poorer and more vulnerable; that they have tended to increase her expenditure and to diminish her income—the first, by the enormous advances necessary for their government and protection—the second, by the mischievous preferences given by her to their productions. She knows that Canada and the West Indies alone cost her three millions a year in establishments; and more than three times that amount, when the public and the private loss is added, in differential duties. Consistently

with this view, she rejected Sicily, and she would now reject Syria. For more than a century she had the power of incorporating Hanover; but she always cherished the hope of throwing it off, and eagerly embraced the opportunity when it came.

The difference between the policy of England and France is marked by their respective treatment of Algiers. They each had a quarrel with the town of Algiers: they each subdued it with the ease with which, in the present state of the arts of war, a civilised power subdues a barbarous one; but England never proposed to retain it. An English minister would have been thought mad if he had seriously suggested such a proceeding. She merely required the Dey to release all Christian prisoners, and to abstain from piracy on any Christian vessels; and then left the country in the degree of independence in which she found it. France deposed the Dey, confiscated his treasures towards payment of the expenses of the war, seized, in violation of an express engagement with England, the whole regency of Algeria, a territory larger than the whole of the British islands, and now, principally because she thinks that she has been dared to do it, is striving to convert it into a province of France.

England is equally free from the other form of ambition—anxiety to increase and extend her influence. She desires no imperial or royal alliances. She does not harass her neighbours by intrigues, nor labour to keep them torn by factions in order that they may be weak, and weak in order that they may be subservient. She

knows that her own welfare is intimately connected with the welfare of her customers. She knows that in proportion to the wealth and the population of a country is its power of consuming her commodities, and of furnishing her with equivalents. She knows that the increase of wealth and population is best promoted by liberal institutions, and by internal and external tranquillity; and she is anxious, therefore, for her own sake, to see those blessings spread over the whole world. The extension of freedom and the preservation of peace are the sole objects of her foreign policy. Her motive may be selfish; but the result is as beneficial as if she were prompted by the purest Cosmopolitan philanthropy.

With respect to fear, England approaches the mean between timidity and rashness. So far as she errs, it is on the side of rashness; and her rashness often arises from the carelessness as to the opinions of others, which we have already mentioned as one of her marked characteristics. She sometimes treats other nations in a mode which, if she had taken the trouble previously to ascertain their feelings, she would have found likely to be highly offensive; and she still more frequently neglects to appease by slight concessions an angry and, as she thinks, an irrational antagonist. She feels sure that she is in the right, and rashly assumes that her opponent cannot be mad enough to urge an absurd complaint, or an absurd pretension to extremities.

But she is far less rash than either America or France. For this there are several reasons. Like America, she has

nothing to gain by a contest, and everything to lose; she wants no glory—she would reject any increase of territory. The most successful war would merely leave her with an increased debt, an increased half-pay, and a diminished commerce. An unsuccessful war might lead her to national bankruptcy and revolution. She is aware that her power renders her an object of universal jealousy.

From the nature of that power, and from the element on which it is most displayed, it is kept constantly before the eyes, not only of her neighbours, but of all mankind. The power of Russia and of France—the two nations that most nearly rival her, is known principally by report. Their vast armies lie concealed within their own frontiers, and must be visited before their force can be ascertained. The power of England is seen on every sea—her vessels of war show themselves in every port. Again, France and Russia are immediately formidable only to the countries which adjoin them. The frontier of England adjoins that of every nation that possesses a sea-coast and a ship; her blows are felt in the first week of hostilities.

A power so widely diffused, and capable of such instantaneous exertion, is necessarily an object of dread; and we doubt whether there is a nation in Europe—even among those which profit most by the mode in which it is employed—that would not rejoice to see it diminished; and, if a war gave an opportunity, would not join to reduce it.

Another circumstance which would materially increase

the danger of England in war, is the doctrine which she has maintained as to the rights of Belligerents against Neutrals. The right which she has been accustomed to claim, of seizing an enemy's property in a friend's vessel, has indeed been assumed by every nation when it believed that it could gain by so doing. It is admitted by every modern jurist to be a part of the law of nations, so far as nations can be said to have a law; but it is one which no philosopher can approve, and no neutral can willingly submit to. A war would force England to relinquish or to enforce it. To give it up at such a period, would be a loss and a degradation; to enforce it might throw all the maritime powers on the side of her enemy.

Under the influence of these considerations, England is prudent; but if it be difficult to get her into a war, it is still more difficult to get her out of one. When once she is engaged, nothing but success or absolute inability to continue the strife will induce her to relinquish it. Neither England nor her enemy can hope that the contest will be short, unless it end, like the Syrian matter, by her immediate triumph. No early defeats, no failures, will break her spirit, unless they should be such as actually to destroy her strength. She will continue the fight with dogged determination, gradually accommodating her habits to it, and throwing always as much as possible of the burden on posterity, until the chances turn in her favour, or pure exhaustion forces her to yield. Such was the history of the last two great wars in which she has been engaged—the first American war, and the Revolutionary

war. She continued the former for years after the impossibility of retaining, for any useful purpose, her North-American colonies was obvious, merely because she could not bear to acknowledge herself beaten. The latter she fought on from 1793 to 1812 (for what was called the Peace of Amiens was a mere armed truce)—while ally after ally was conquered or had deserted her, while every year seemed only to increase her own debt and the power of her enemy—in the firm expectation, though it is difficult to say on what ground, unless it were the personal character of Napoleon, that at length the tide would turn; and turn at length it did, but in consequence of events which she certainly had no right to anticipate. It is obvious that this pertinacity materially increases the dangers and prolongs the evils of war, both to England and to her enemy. The statesman, whether English or foreign, who engages her in hostility with a first-rate power—and no other would venture to cope with her—opens a historical period, of which neither the duration nor the event can be predicted.

The angry feelings of England are not so easily roused as those of America or France. She has not the touchiness of the one, or the irritable suspiciousness of the other; but her merits in these respects are comparative, not positive. Indeed, such are the defects of every national character, that a critic has little to do except to apportion blame in different degrees. The pride of England, and the tendency which we have already remarked to rely on her own view of every case, without

enlightening herself by the opinion of others, often persuade her that she is insulted or injured, when an impartial bystander can see little ground for her complaint. The late case of Macleod affords an example. If America had attempted to inflict any punishment on Macleod, or even to detain him after the termination of his trial, England would have been aggrieved, and would have righted herself, whatever the risk or the sacrifice. But she was not aggrieved by the conduct of America in making the matter the subject of a solemn judicial enquiry. The slowness with which the enquiry proceeded was very painful to the accused; the successful opposition of the local authorities to the view taken by the Federal government, showed great defects in the institutions of America. But Macleod voluntarily subjected himself to the influence of those institutions. When he voluntarily entered the territory of New York, he knew, or must be held to have known, what were its laws, and he tacitly engaged to be governed by them. England has always refused to deviate from her laws on the requisition of a foreign power; she ought not to have complained that America followed her example. And yet the general opinion in England was, and perhaps still is, that the trial of Macleod was an injury to be resented and redressed.

But if the resentment of England, like that of every other powerful nation, is too easily roused, it is placable and generous. She readily admits terms of reconciliation. She does not trample on a beaten enemy. She does not brood vindictively over the events of a contest that has

ended. She does justice to the virtues of an opponent. When Marshal Soult visited London, he was known only as a formidable enemy. He had shown no peculiar courtesy or forbearance, and he was even suspected—though we firmly believe the suspicion to have been unfounded—of having forced on a battle after he knew that the war had virtually terminated. It might have been expected that he would be received with cold civility. That he immediately became the idol of the multitude—that on the very day of the coronation he divided with the Queen their admiration and their applause—is one of the strongest proofs that could be given of the sympathy of a people with the courage and talent of an adversary.

It may be said, however, that Marshal Soult had been beaten, and that his reception would have been different if he had defeated us. As neither the defeats of England nor her visitors have been numerous, we are unable to find a case in point. But no one, we think, will doubt what would be the result if General Jackson were now to land on our shores:—the man who with undisciplined militia, and in the midst of a slave population, ventured to resist the veterans of our Peninsular campaigns, who defeated them, and perhaps prevented us from partitioning his country, would be received by his old enemies with a popularity as great as that of Soult.

It might be supposed that a nation so intent as England on her domestic affairs, and so indifferent to the sympathy of others, would care little about the welfare of those around her. The inference, however, would be erroneous.

No nation feels a livelier concern in the fortunes of her neighbours; and her sympathy has operated at least as frequently to the injury of her own interests, as to their advancement. Sympathy on the part of one portion of her population with the sufferings of the royal family and aristocracy of France, and on the part of another portion with the efforts of the French people to obtain free institutions, absorbed public attention throughout the British islands, broke up and recomposed parties, severed long-established political friendships, invaded even the tranquillity of private life, and materially promoted the war, which, while it raised the glory and augmented the apparent power of England, inflicted on her injuries which will never be completely repaired. Sympathy for Greece, rebelling against the oppression of Turkey, led to the 'untoward,' we may say the unjustifiable, event of Navarino;—led England to aid a rival against an ally, and to help in breaking down a power whom she has ever since been vainly endeavouring to protect and to invigorate. Sympathy for Africa has led England into a vast expenditure of money and of life, and into a complication of diplomacy, dictation, and interference, which has roused the hostility of the whole maritime world, and has induced nations which cannot appreciate, or even comprehend her motives, to ascribe to some unintelligible plan of aggrandisement conduct which arises from disinterested benevolence. If England had looked on the happiness or misery of others with the selfish indifference of America, many a bright page would have been wanting in her

history, but much would have been added to her prosperity and to her power.

In considering the influence of pride on the conduct of England, we made some incidental remarks on her justice. We proceed now to give a more detailed view of that part of her character. The subject is so extensive that it will be convenient to subdivide it—to treat separately her conduct in war and in peace; and to subdivide the former branch into the consideration of her behaviour towards her enemies, towards her allies, and towards neutrals.

In her treatment of enemies, the conduct of England has been, in some respects, better than that of most of her contemporaries; but, we regret to say, that it has seldom risen above that low standard, and sometimes has even fallen below it.

Among the rights of war, the most undefined are the right to confiscate the property of individuals; the right to inflict damage which does not really weaken the enemy; the right to treat certain forms of resistance as crimes; and the right to partition a conquered country, and to dispose of its inhabitants without their consent.

With respect to the first of these rights, the rule differs at sea and on land. It is admitted—though on no principle that would not equally apply on land—that at sea the private property of an enemy may be seized. England has always acted upon this principle to its fullest extent, and so, indeed, has every nation when it had the power. Equity, perhaps, would require—if there were room for equity in such a matter—that some warning should be

given; and that merchants who had undertaken voyages in peace, should not unexpectedly find themselves entangled in the risks of war. No such indulgence, however, is afforded; and England is not peculiarly responsible for this injustice. But England is responsible for the extension which she gives to an unjust principle. She is responsible for the pertinacity with which she exercises the right, which some other nations have ceased to enforce, of confiscating in her own ports vessels which, when they arrived, were friends, and which a war has subsequently converted into enemies. She is responsible for the habit, when vessels have visited her ports in the full confidence of peace, of preventing their escape if she have a serious dispute with their government; and of detaining them, pending the dispute, for the purpose of confiscation, if the dispute terminate in war. The *droits* of the Admiralty have been dearly purchased.

We are glad to turn to her conduct on land; for there she has generally acted with justice, and even with forbearance. She does not support her armies by plunder or by requisition. She endeavours to restrain them from all wanton devastation. Her treatment of the inhabitants of an invaded country has generally been less oppressive than would have been warranted by the laws of war. Of course, her behaviour has not been unvaried. The Duke of Wellington's threat—'If I have farther reason to complain of Bidarry, or any other villages, I will act towards them as the French did in the villages of Spain and Portugal; I will totally destroy them, and hang up all

the people belonging to them that I can find;'* and his subsequent statement of the execution of this threat—'Pour moi, je fais pendre tous ceux qui font le métier de partisans, et je fais bruler leurs maisons'†—are scarcely justifiable, even by the example which he quotes from France. The burning of Buffalo in 1814 was defended as the best means of preventing a repetition of the excesses committed by the Americans in Upper Canada. But no such excuse can be pleaded for the wholesale plunder of merchandise at Alexandria, or for the destruction of the public buildings of Washington.

Subject, however, to a few exceptions, we repeat that on land England, as a belligerent, has been forbearing. Her conduct after victory has been of a mixed character. She has almost always been disinterested. She has sometimes, as towards France at the conclusion of the last war, been generous, and she has never been vindictive. But she has not always sufficiently respected the feelings, or even the rights of the inhabitants of the countries whose fate has been placed in her hands by her military superiority.

As an example, we will state shortly her treatment of Norway. In the beginning of the year 1812, Denmark, Sweden, Russia, and France were united in war against England. In the course of that year Russia quarrelled with France, and it became essential to her to obtain the neutrality, and, if possible, the aid of Sweden. But only

* Letter to Marshal Beresford, January 28, 1814.—*Despatches*, vol. xi. p. 483.

† Letter to the Mayor of Hagetman, March 21, 1814. Ibid. 601.

four years before, by the assistance of France, she had robbed Sweden of Finland. She did not choose to restore it, and as a substitute offered to give to her Norway, then, and for centuries before, a part of the territories of Denmark, with whom Russia, who made the offer, and Sweden, to whom it was made, were allied. Sweden accepted the proposal, and England, now turned into the ally of Sweden and Russia, agreed to assist in carrying it into execution. Denmark, of course, refused her assent, and Sweden and Russia declared war against her. As soon as the defeat of France left the Swedish troops at liberty, they overran the continental dominions of Denmark, and forced the King to sign a treaty transferring Norway to Sweden. But Norway objected. She had been at variance with Sweden for centuries; her population was much smaller, her civilisation was more advanced, and she refused to become an appendage to a nation which she hated and despised. Relinquished by Denmark, she asserted her independence, took the present King of Denmark for her sovereign, and proclaimed herself at peace with all the world, but ready to resist to the utmost any attempts to change her destiny without her consent. She might have been able to repel force, but she could not support famine. England blockaded her coast and starved her into compliance.

As a belligerent ally, the conduct of England has been exemplary. When she has made an engagement, no dangers or sacrifices to be incurred by its performance, no advantage to be obtained by its violation, will tempt her to break or to evade it. Where there has been a balance

of conflicting duties, she has sacrificed to fidelity motives which may appear to have been still more important. Her blockade of Norway was an instance. England certainly ought not to have been a party to the iniquitous compact by which Russia and Sweden agreed to rob and dismember *her* enemy, but *their* ally; or at least she ought to have made it a condition that the consent of Norway, should be obtained. But having signed the treaty, she felt bound by it, and carried it into effect in defiance of the just complaints of Norway, and in opposition, as we believe, to her own interest.

The conduct of Austria and Bavaria, in directing against France, the instant that her fortunes changed, the very armies which were in the field as her allies, was eminently beneficial to Europe, and perhaps, therefore, was justifiable; but it would not have been adopted by England. The behaviour of the other European powers during the late war, was a foil that showed this portion of the English character in high relief. While one continental alliance after another was dissolved by fear, or selfishness, or treachery, until the word 'coalition' seemed almost to mean disunion, the honour of England remained not only without stain, but without suspicion. She imposed no selfish conditions—she evaded no stipulations—she made no separate treaties—she accepted no indemnities at the expense of her friends—she did not join her enemies to plunder and crush her allies. We have already remarked, that in general the conduct of the best nation is far inferior to that of an average individual; but on this

point the best man could not do more than copy the example of England.

We earnestly wish that we could bestow a portion of this praise on her conduct towards neutrals. We wish that we could exempt it from severe censure. Two sacred duties are imposed on belligerents. One is, to force no nation to break her neutrality; the other, to inflict on neutrals no further inconveniences than those to which they are subjected by the existing law of nations. The violation of these principles has a tendency to render every war universal; and, consequently, to render war the ordinary state of mankind, and peace only an armed truce. It has a tendency to sap the weak foundations of international law—to destroy the independence of all the feebler states, by rendering power necessary to security—and to force the civilised world to arrange itself in the form least favourable to moral and intellectual improvement, as the subjects of a few great military sovereignties. Both these rules have been broken through by England. An instance of her violation of the first rule may be taken from her behaviour to Denmark in 1807.

Until that year Denmark had preserved a strict neutrality. When the subjugation of Prussia, and the alliance of Russia, made the influence of France preponderate in the north of Germany, England, who still retained the alliance of Sweden, felt that if she could obtain that of Denmark a powerful barrier might be opposed to the progress of France; and she also felt, that if France could seize that alliance, Sweden could not

resist, and that the whole north of Europe would become hostile. It was known that mere solicitation on either side would not induce Denmark to take part in the war; but it was believed that France would not confine herself to solicitation. Napoleon, in his answer to the Hamburg deputies, had spoken with disapprobation of the commerce between Denmark and England, and had added, 'That little prince had better take care of himself.' Murat had hinted to Sweden, that if she would join France she should be rewarded with Norway, and a French force was collected near the frontier of Holstein.

On these grounds, assisted by the usual tenor of French policy, England believed that France would take an opportunity, probably as soon as winter had closed the Sound, of entering the German possessions of Denmark, and of endeavouring to occupy Zealand and to get possession of her fleet. Denmark herself seems to have participated in these fears; for she collected an army in Holstein for the apparent purpose of opposing, or at least deterring, that of France. But she was little aware from whence her neutrality was really menaced;—so little, that when her merchants confidentially enquired of the Danish government whether it might be advisable to remove their vessels from the English ports, they were answered that there was not the slightest ground for apprehension. Suddenly an English fleet, carrying an English army, appeared before Copenhagen, and proclaimed, 'That it was impossible for Denmark, though it desired to be neutral, to preserve its neutrality: That the King of Eng-

land had therefore judged it expedient to desire the temporary deposit of the Danish ships of the line in one of his Majesty's ports.'* An envoy was sent to make this proposal to the Crown Prince, and if Denmark was really prepared to resist the demands of France, and to maintain her independence, his Majesty proffered his co-operation for her defence—naval, military, and pecuniary aid, the guarantee of her European territories, and the security and extension of her colonial possessions.' †

Such a proposal, so enforced, was repelled with indignation. But the British power was overwhelming. Copenhagen surrendered after a short bombardment, and her fleet, consisting of sixteen ships of the line, most of them old and unserviceable, and some frigates and sloops, was carried to England. The neutrality of Denmark was effectually destroyed. The instant our troops quitted Zealand she threw herself into the arms of France, and continued during the remainder of the war one of our bitterest enemies. The defence of England rested on the supposed designs of France, and the supposed inability of Denmark to resist them. We do not doubt the truth of either of these suppositions; but it is obvious that, if they formed a valid excuse, there would be an end to the neutrality of the weaker powers. If an expected violation of the rights of neutrality by one State justified an actual violation by another, belligerents would run a

* British Proclamation, August 16, 1807.

† British Declaration, September 25, 1807.

race of injustice, of which the most unscrupulous would reap the profit, and the neutral would be the victim.

It may be added that this great crime was also a great *fault*. It had not the poor merit of immediate expediency. The three evils which England apprehended, if she allowed France to violate the neutrality of Denmark instead of doing so herself, were, first, the exclusion of England from communication with the Danish shores; secondly, the closing of the Sound against her commerce and navigation, so far as Denmark could close it; and thirdly, that France might direct against her the maritime force of Denmark.* She attacked Denmark for the purpose of preventing these consequences. Her attack succeeded, and immediately produced them every one. She was instantly excluded from all communication with the Danish territory; the Sound swarmed with Danish privateers and gun-boats, almost before her squadron carrying off the Danish fleet had passed through it; and though she carried off the fleet, she left behind the sailors, and men not ships were what France wanted. France could not man her existing navy. To the extent of the whole maritime population of Denmark, England, by converting them into active and determined enemies, supplied that want. The results of this most atrocious proceeding are an illustration of what we believe to be a truth nearly as general among nations as among individuals—that injustice is folly.

* British Declaration, September 25, 1807.

We proceed to show the conduct of England towards the nations which she allowed to remain neutral. The maritime rights of a belligerent against neutrals are four:—

1. The right to prohibit neutral vessels from entering or attempting to enter a blockaded port—that is to say, a port so closely watched by a belligerent squadron as to make entrance without their permission difficult.

2. The right to prevent neutrals from supplying the enemy with certain commodities—such as military and naval stores, and other warlike provisions, which are termed 'contraband of war.'

3. The right to seize and confiscate an enemy's property found on board a neutral vessel.

4. As necessarily incidental to these rights, the right to board neutral vessels, and to examine their cargoes and papers, in order to ascertain the nature and the ownership of the cargo, and the object of the voyage.

The right of a neutral against a belligerent is, that, subject to the rights of war, her vessels on the high seas are to be treated in war as they are to be treated in peace—that is to say, as invested with all the privileges and all the independence of the country to which they belong.

During the portion of the war which preceded the Peace of Amiens, France set all law at defiance. She decreed that all vessels containing any commodities of English origin should be confiscated, and that neutral sailors found on board English vessels should be put to death. Her cruisers carried on a system of almost

indiscriminate piracy; her prize courts were as iniquitous as her captors; as far as her power extended, she preyed on the commerce of the whole world. Under the Consular government these decrees were repealed; but in a few years the system was resumed, though in a form somewhat different. By the decree of Berlin of November 21, 1806, the British islands were declared in a state of blockade, and the whole world was prohibited from holding intercourse with them. England answered by an Order in Council of January 7, 1807, by which she prohibited all neutral vessels, on pain of confiscation of ship and cargo, from trading from one port to another, each such port being in the possession, or under the control, of France or of her allies; and by another order of November 11, 1807, which declared that all the ports of France and of her allies, or of any other country at war with England, or from which the British flag was excluded, should be subject to the same restrictions as if the same were actually blockaded; that all trade in the produce or manufactures of such country should be unlawful; and that every vessel trading with any such country and all her cargo should be confiscated, unless she had previously visited a British port, or were on her way to a British port. And France replied by a decree of December 17, 1807, which declared that every vessel, of whatever nation, which had visited an English port, or a port occupied by English troops, should be lawful prize.

England and France thus assumed each to inflict on vessels trading with the dominions of the other, or with the

dominions of the allies of the other, the punishment that is lawfully inflicted on those who break through a real blockade. As far as the two greatest powers in the world could effect it, neutral trade was annihilated. France, as far as she was able, confiscated vessels if they visited a British port, and England if they did not do so.

England's excuse was retaliation; but it was a retaliation directed, not against France, but against those whom France was oppressing. The vessels which she confiscated under her Orders in Council were not French vessels, but vessels belonging to nations with whom England was at peace.

Still, however, in this rivalry of oppression she had the miserable plea that she followed the example of her enemy. She was guilty of another violation of the law of nations, for which she had not this shadow of an excuse.

The crown of England is entitled by the law of the country to the services in war of all her sailors. But of course this right, like all other municipal rights, is incapable of exercise within the dominions of another State, except by the permission of that State. Subject to the rights of war, a vessel on the high seas is invested, as we have already remarked, with all the privileges and all the independence of the country to which it belongs. The rights of war entitled England to search neutral vessels, in order to ascertain the nature and ownership of their cargoes. In the execution of this duty her officers often found Englishmen among their crews. If the vessels had been English, it would have been lawful to impress such

men, to deprive their vessel of their services, and to force them into the royal navy. England thought fit to act thus, although the vessel were foreign. She thought fit to import her own laws into a floating portion of the territories of an independent nation; and to enforce them as if the high seas were really a part of her dominions.

This would have been a most oppressive exercise of superior force, even if she could have been sure that the men whom she so impressed were English. There was no difference between her taking Englishmen out of an American or a Danish vessel, and her sending a pressgang into Elsinore or New York to seize all the English sailors whom it could detect on the quays. But there is another maritime nation with the same origin, the same habits, and the same language. It was impossible that when a British officer passed in review an American crew, and selected those whom he believed to be English, he should always escape error; it was impossible that an American should not sometimes be taken for an Englishman—and the mistake, if made, was generally irremediable. The man might be carried off to a distant climate, and years might elapse before he could prove, if he ever could prove, his citizenship. America remonstrated, threatened, obtained no redress, and at length had recourse to arms. The war terminated with the general peace; and, with the exception of the mutual injuries which it inflicted, and the traces which still remain of those injuries, left all things as it found them.

We trust that the time is not distant when England will voluntarily relinquish this monstrous pretension. She must feel that she would not submit to it herself; that if France and America were at war, she would not permit a midshipman from an American frigate cruising in the Channel to muster the crews of her merchantmen, and to seize and carry into military servitude all those whom he thought fit to consider American citizens. Rights which she would not allow to others she cannot in justice, or even in prudence, endeavour to maintain for herself. *Now*, in time of peace, she may disavow them with dignity: if she should be engaged in war, she will be forced either to abandon them on apparent compulsion, or to rouse the hostility, and, what must be formidable even to England, the well-grounded hostility, of every neutral by enforcing them.

In peace England is never intentionally unjust; and this is no slight comparative merit. We have already remarked that her pride, her confidence in her own wisdom and justice, and her neglect of the opinion of other nations, must have a tendency to warp her notions of what is right, and to lead her to take what a German would call a 'one-sided' view of disputed questions. But her motives are not sordid or ambitious. She never sins against her own conscience. She sometimes believes that she has rights which an impartial judge would not concede to her; and she often adheres more obstinately than is wise—more obstinately than she would do if she listened to the opinions of others—to the claims which she thinks

that she possesses in equity, if not at law. But we must add that, if she sometimes demands that a compact be interpreted according rather to the spirit than to the letter, to the substance than to the form, she acquiesces as soon as she is convinced of its justice in such a demand from others. The difficulty is to convince her. Sometimes, indeed, to show to her that there is a fair doubt is enough.

Her conduct with respect to what has been called the 'Russo-Dutch Loan' is an instance. By a treaty, dated May 15, 1815, England and Holland agreed to pay to Russia in equal moieties, by instalments, the principal and interest of fifty millions of florins;—'It being understood,' added the treaty, 'that the said payments, on the part of the King of the Netherlands and the King of Great Britain, shall cease and determine, should the possession and sovereignty (which God forbid) of the Belgic provinces at any time pass, or be severed from the dominions of the King of the Netherlands, previous to the complete liquidation of the same.' In 1831, while a large portion of the debt remained unpaid, the event contemplated by the treaty seemed to have happened. Holland, consequently, discontinued her payment, and it rested with England to decide whether she should continue hers. The feeling between the nations was anything but amicable. Russia was engaged against Poland in a war to which all our sympathies were opposed; and was suspected, with reason, of designs and practices inconsistent with her professions of friendship, and injurious to our interests and to

our tranquillity. There never was a period at which we less wished to court or to strengthen her. It seemed doubtful even whether the two countries would continue at peace. According to the words of the treaty, England was clearly released. The possession and sovereignty of the Belgic provinces had passed, and were severed from the dominions of the King of the Netherlands. England, however, felt that there was a doubt. It might be contended that the severance contemplated by the treaty, as the determination of her engagement, was a severance by external force, not, as had occurred, one by internal dissension; and it might be argued that one of the objects of the stipulation in question was to bind Russia to use her utmost endeavours to preserve the connection between Belgium and Holland, and that Russia had performed that duty. We own that we do not acquiesce in this reasoning, nor was it held conclusive by England. We have little doubt that, if the question could have been submitted to a legal tribunal, judgment would have been given against Russia. But as the decision rested with England, she thought that it became her to decide against herself. She has continued her payments as if no severance between Holland and Belgium had occurred.

We shall close our view of the three great nations whom we have compared by some remarks on the degree in which the character of each seems to deteriorate or improve. During the present century the influence of the people on the public conduct of America, France, and

England has been constantly increasing. In each of these countries the forms of government have become more and more liberal, and public affairs have excited among the people more and more attention. During that period almost every state composing the American Union has approached nearer to a pure democracy. France has acquired a representative system; and the constituency on which it is founded, narrow as it is, has been progressively enlarged. The Government has been more and more under the influence of the Chamber, and the Chamber under that of the electors. Napoleon was more independent of public opinion than Louis, Louis than Charles, and Charles than Louis Philippe. In England the growth of the towns, and of the commercial and manufacturing interests, has enabled them to measure their strength with the aristocracy—to effect a revolution which, though tranquil, has been real—and to conquer an influence which, though its progress is irregular, and from time to time apparently checked, must ultimately predominate. Under such circumstances, the public conduct of a state becomes a better and better index of the character of its population.

We regret to say that the character of America seems to deteriorate. She appears to us to become more captious, more litigious, more rash, and, we fear, even more ambitious, as her power advances. And when we consider the probable magnitude of that power at no distant period, the possibility that she will abuse it is a source of alarm, both for her own sake and for that of Europe. As far,

however, as European interests are concerned, it must be recollected that every abuse of her power by America has a tendency to check its growth; and that, if ambition were to seduce her into prolonged war, or to an extension of territory much exceeding what are now her acknowledged limits, the probable result would be that she would be dissolved into independent and rival and frequently hostile states, less beneficial to mankind than if she had remained one pacific empire, but certainly much less formidable.

In the public character of France we see little change. Her ambition, her thirst for admiration, her indifference to the means by which it is to be obtained—perhaps we might say her desire to be admired rather for her courage than for her forbearance, rather for her power than for her justice—her want of faith and of candour—the unreasonableness of her resentment and the fierceness of her hate—have been as conspicuous during the last few years as during any portion of her history.

England is still very different from what we could wish her to be; but she is improving. Her feelings have been more decidedly pacific—her sympathy in the welfare of other nations has been stronger—her resentment less readily roused and more easily appeased—and her whole conduct has been more disinterested and more prudent during the last twenty-five years than during any other period of equal length for a hundred years past. We trust that an extension and improvement of education,

commensurate with the increased influence which the body of the people are acquiring over her councils, will improve her good dispositions; that the reform in her tariff, which the public voice demands, and must obtain, will direct her commerce towards the more civilised portion of her European neighbours; that increased intercourse will produce more community of feeling and opinion; above all, we trust that she will escape the great corrupter—war; that she will have no victories to inflame her passion for military glory, no defeats to make her timid, and no disgraces to wipe out.

With respect to her conduct towards the two nations with which we have compared her, we hope that when any differences arise between her and America—and differences must constantly start up where there are so many thousand miles of contiguous frontier—she will instantly endeavour to have them referred to arbitration. It is scarcely possible that states, so litigious and so ignorant of European public law and of European feelings as America, and so self-confident as England, should ever convince one another, or agree as to a basis of compromise;—even supposing, what never will be the case with respect to England, that each government had leisure and patience to understand the matter in dispute. A controversy attempted to be carried on direct between Downing Street and Washington lingers on from year to year—sometimes apparently forgotten, and sometimes apparently on the brink of adjustment—but with a constant tendency in each party, at every renewal of the discussion, to become

more acrimonious and more obstinate. With respect to France, we hope much from the commercial treaty, of which even the details have long been arranged—which each government has long been anxious to sign—which is demanded by the departments, and delayed only in fear of the Journalists of Paris. Commerce, manufactures, and the desire for individual advancement, may, in time, direct to peaceful pursuits the restless ambition and vanity which now seek to be gratified by participating in the general glory of the nation. But while we desire to have with France as much of commercial intercourse as is possible, we desire to have as little as is possible of diplomatic intercourse.

It is with deep regret that we express our conviction that, until this change in the habits of thinking and feeling in France shall have taken place (an event of which we see no present indication), any durable alliance between the two countries is impossible. They may not—we trust that they will not—be at war, but their peace will not be the peace of friends. If the present hostility of France to England had arisen merely from the recollection of past defeats, it would wear out as those defeats receded more and more into the obscurity of history. If it had arisen from our disapprobation of her interference against the liberties of Spain, or of her colonisation of Algiers, or from the Syrian dispute, the only matters in which for the last quarter of a century we have opposed her, it would have subsided when those questions had been disposed of. Her hostility springs from far deeper sources.

Sixty years ago, towards the close of the American war, France was the most powerful kingdom in the world. Her population amounted to twenty-six millions, while that of the British islands did not exceed thirteen or fourteen, that of Austria and of European Russia about twenty-five each, and that of Prussia seven or eight. She had flourishing colonies, a fleet which could cope with that of England, and a population superior in wealth and industry to that of almost every other portion of the continent except the Netherlands. On her southern and south-eastern frontiers were Spain, Savoy, and Switzerland, all under her influence; then the territories of petty German states; and then, to the north, the Austrian Netherlands, the weak dependencies of a distant empire. *Now* Spain, Savoy, and Switzerland, have thrown off her control. Belgium, in close alliance with England, is on her north, and the grand duchy of Luxemburg, Rhenish Prussia, Rhenish Bavaria, and Baden—all connected by the powerful Germanic confederation—close her in on her remaining frontier. Her military marine, no longer supported by an extensive commerce, has ceased to be formidable. Algiers is the substitute for almost all her colonies: the wealth and industry of her people are scarcely equal to those of the inhabitants of many of the nations round her; and while her population has reached only thirty-four millions, that of the British islands amounts to twenty-seven millions, that of Austria to thirty-seven, that of Prussia to fourteen, and that of Russia in Europe to fifty.

France looks at the change with a mixture of grief and terror.

> Æstuat ingens
> Imo in corde pudor, mixtoque insania luctu,
> . . . . . et conscia virtus.

She fears that, if her neighbours outstrip her in the next half century as much as they have done in the last, she will sink to a secondary power. To a bystander the remedy appears to be obvious. If she would cease to waste the resources of her subjects by a grinding taxation, for the purpose of maintaining armies and fleets of no use but to keep up the enmity of Europe—if she would cease to throw, annually, thousands of men and millions of money into the vortex of Algiers—if she would modify the barbarous tariff which excludes her from foreign commerce—if she would abolish the restrictions and monopolies which fetter and diminish her internal production, consumption, and exchange—in short, if she would liberally and honestly cultivate the arts of peace—there is no nation whose rivalry she need fear. With her territory, her soil, and her climate, she might in half a century possess a prosperous population of fifty millions.

But the selfish short-sighted interests of large classes, and the vanity, impatience, and ignorance of all, seem to render such measures as these, for the present, impracticable. Self-condemned, therefore, to slow progress herself, she wishes to impede the progress of others. Since she cannot overtake them; she wishes to drag them back. Of all her rivals, England is the most powerful, and therefore

the most detested. She believes, and we admit the justice of the opinion, that England would be seriously injured by a war. And hence her earnest desire to involve her in one—a desire which must last as long as its causes continue—that is to say, as long as England remains powerful, and France envious and ambitious. It is true that France cannot be engaged in a serious war without overthrowing her present dynasty and her present constitution. They have no roots to withstand a storm. And this is the principal security for peace. But we doubt much whether the attachment of France to such a dynasty and to such a constitution would restrain her if a plausible pretext for war should arise. And the more numerous are the matters in which France and England have to act in common, the more numerous their points of political contact, the more numerous will be the occasions for a rupture.

We will venture to go farther, and to suggest a doubt whether the variety and activity of our general diplomacy, since the termination of the war, may not have been somewhat excessive. Without adopting the opinion of one of our shrewdest statesmen, that the best thing for our foreign affairs would be to lock up the Foreign Office for three or four years and hide the key, we may wish that that Office were less easily accessible. It is possible that a plausible pretext might be brought forward for every case of our interference; but in how many of those cases were there not plausible grounds for remaining quiet? Up to the present time interference has been the rule, and abstinence from it the exception. We are inclined to wish

the rule and the exception to change places. It is not necessary, indeed it would not be prudent, for England to announce beforehand what are the precise points which she would consider cases for remonstrance or cases for war. What we wish is, that it should be felt that she seeks to avoid *all* interference; that when she does interfere it is for a great object, and one in which others are interested as well as herself; and that, in such a cause, she will put forth her whole force.

How much expense, how much anxiety, how much danger, and how much enmity, has America escaped by her system of non-interference? What is the circumstance which has allowed her to adopt that wise and fortunate system? Chiefly her belief that she is protected by the Atlantic from serious attack. But the sea, which separates America from Europe, separates England from the continent. We are nearly as difficult of access as she is. Experience, indeed, might lead to the belief that Washington is more exposed than London. It is supposed that our constant exertions are necessary in order to keep the Balance of Power. It is difficult, however, to believe that this Balance may not be preserved by the mutual fears and mutual exertions of the great continental monarchies, with less action on the part of England. Germany now knows her own power; France is beginning to appreciate the power of Germany; Russia is an object of jealousy to both. Is it certain that our intermeddling may not have tended as often to disturb the equipoise as to adjust it? We must add, that the indifference of the

British public to foreign affairs, and the secrecy in which our negotiations are enveloped, greatly useful as these circumstances are in many respects, add to the dangers to which all diplomacy is exposed. The publicity of all the acts, and of all the correspondence of the American government, and the cooperation of the Senate in treaties, have their peculiar evils and dangers; but they have at least one advantage. The country knows where it is. It cannot be surprised into an engagement or a war. It cannot be suddenly informed that, during a period of apparent inactivity, the national faith and the national honour have been pledged to promises, demands, and threats, which the national opinion would have refused to sanction. But in England, alliances, guarantees, and all the other mischiefs of diplomacy, may be concocting in Downing Street, while the Bank Parlour and the Royal Exchange enjoy a fancied security; and the nation may be awakened from its dream of safety only by the presentation of Papers and the demand for a Vote of Credit.

APPENDIX.

TWENTY YEARS have passed since the previous essay was written. During that time, the three great nations which I have attempted to describe have all greatly increased in power and in wealth, and have all undergone the trial of war. One of them has passed through two revolutions,

and is now subject to a form of government resembling that of 1842 in nothing but its centralisation. It may be worth while to examine, as briefly as the extent and complexity of the subjects will allow, the effect which these twenty eventful years have produced in their respective characters. We might expect to find these changes great.

When we consider how much longer the life of a nation is than that of a man, how much less its fate is influenced by the unknown causes to which we give the name of chance, and with how much nearer an approach to certainty its crimes and follies bring with them their appropriate punishment, we might suppose, if we were unacquainted with history, that nations would obtain, at least as easily and as certainly as individuals do so, the wisdom that is the result of experience. If a man of ordinary sense has undergone great suffering, and has incurred great danger by pursuing a given line of action—if he has discovered the connection between his misfortunes and his conduct, and has escaped destruction only by a total change of measures—it is not probable that he will soon fall again into the same errors, or even into errors the same in kind. If he finds that the peculation of his agents has reduced him to the verge of ruin, and that their peculation was the result of his own blind confidence, it is probable that he will for the future look narrowly into his affairs. If he has begun the education of his eldest son on a system of over-strictness or over-indulgence, and has been forced to alter it, it is not probable that he will repeat the same fault with his second son. It is more

likely that he will fall into the opposite extreme. Though the wisest men do not make a full use of their experience, yet even ordinary men are in a great measure governed by it, and those must be absolute fools who utterly neglect it.

But, unhappily, we should be mistaken if we were to expect, from the most civilised nations, the practical sense of ordinary men.

For twenty years France endured all the miseries of unsuccessful and of successful war. She found every defeat and every triumph lead to fresh burthens and fresh losses. Her ports were deserted, her capital was twice occupied by a victorious enemy, her fields were tilled by old men and women, every parent saw his adult sons carried off by the conscription, in all probability never to be heard of again, and felt that he was rearing their younger brothers only to fit them for a similar fate. While under the actual pressure of these sufferings France eagerly caught at peace, whatever might be its price. She surrendered colonies, gave up territories and boundaries, submitted to a dynasty that she both hated and despised, engaged to pay a tribute, and even allowed her fortresses to be held as a security.

Twenty-five years after she was ready to rush into a war against the whole of Europe, a war far more unpromising than that which had pushed her to the very brink of national destruction, not because she was injured, or even menaced, but because the signature of a treaty in which she had refused to concur had not been intimated to her with sufficient politeness. The weakest man would have

profited by experience better than one of the most civilised nations. The cause of this lamentable difference between a nation and a man is, that the experience of a man is personal, that of a nation is in a great measure historical. A man retains his identity. He is the same person at twenty and at sixty. He recollects in advanced age what was his conduct in youth, and what were the advantages and the evils which it occasioned. But the identity of a nation is perpetually changing: every thirty years the conduct of its affairs is in the hands of a new generation, who know only from tradition the fortunes of their predecessors. In the year 1872 how few of those who influenced the affairs of England in 1842 will have any political existence! And how constant will have been the change during the whole intermediate period! How great has it been during the twenty years that have last passed! How great is the number of those, formerly active each in the public business of his own circle, whom death or illness, or indifference, or change of circumstances, has removed from the stage! How many have succeeded to them who, twenty years, or even ten years ago, thought of nothing but their private concerns, their private pleasures, or their private duties!

The material changes during these twenty years have been greatest in America. In 1842 the area of the United States was 1,300,000 square miles. It is now 3,306,834. The population in 1840 was 17,063,353. In 1850 it had risen to 23,191,876. It is now 31,676,217. In 1842 the public revenue was $19,643,967, and the expenditure was

$24,361,337. In 1859 the revenue was $53,405,081, and the expenditure $66,346,226. In 1842 the imports were in value $100,162,087, the exports $104,691,534, and the tonnage was $2,092,391. In 1859 the imports were 338,768,130, the exports were 356,789,462, and the tonnage was 5,146,037.

Never since the world began has there been such a general advance. Other nations have added as much to their territories within an equally short period, but it has generally been at the expense of their population and of their wealth. Other nations have added as much to their wealth and to their population, but it has been not in years but in centuries. A new United States, nearly twice as large, and more than twice as rich, with twice the commerce, vast as that was, and three times the revenue, great as that was, has been added to the United States of 1842, which even before that addition was more than equal in extent to one-third of Europe, and was ten times larger than the British islands.

An enormous and sudden increase in wealth and power is not good for man, individually or collectively: indeed, as men in their collective form, that is, when acting and feeling as nations, are far more unjust, more insolent, more rapacious, more cruel, more treacherous, in short, in every way more to be dreaded and to be hated than are the average of individuals, it was probable that the national character of America would suffer deeply from her sudden burst of prosperity. And it has been so. What was good in her conduct towards other nations

has almost disappeared. What was bad has acquired a frightful intensity.

In 1842 she could be described as comparatively unambitious. Her ambition now is as grasping and as unscrupulous as that of Russia. 'There is not,' said Mr. Seward in 1850, 'in the history of the Roman Empire, an ambition for aggrandisement so marked as that which has characterised the American people.'* In 1842 I could say that she was wise enough to make few treaties, and honest enough to keep them. Now America disavows her negotiators, refuses to ratify stipulations into which they had entered under the orders of her executive, and even when a treaty has been ratified, sometimes eludes it by fraud, sometimes breaks it by violence. Sometimes she escapes from a solemn compact by a quibble about the meaning of a word; sometimes she refuses to perform it, because the will of the people disapproves it. If a reference is proposed, sometimes she answers that her title is so clear, and the justice of her cause is so obvious, that she cannot allow it to be questioned. Sometimes she answers that such is the state of public feeling against her in Europe, that she cannot hope to find an impartial arbitrator. In 1842 I could hope that, as America increased in power she would become less irritable; that she would in time exhibit the magnanimous candour and forbearance of conscious strength. That time has not come. It seems farther off than ever. Candour and forbearance are qualities

* Speech on Freedom in New Mexico. Seward's works, vol. i. p. 127.

slowly acquired. They are the result of early education and refinement, and do not belong to men or to communities which have become suddenly rich and suddenly powerful. The insolence of American diplomacy is as remarkable as its want of faith.

It may be said, indeed it has been said, by some of the Northern Americans, who now admit the injustice and brutality of their diplomacy, that during the last thirty years the union has been in the hands of the South, and that the South only is responsible for the rapaciousness, the ill-faith, and the rudeness of the statesmen whom she inflicted on the Union.

An intelligent and well-informed Northern diplomatist, Mr. Jay, formerly Minister of the United States in Switzerland, has supported this view forcibly, in a letter printed in 'The Times' of November 1, 1861.

For half a century (says Mr. Jay) the influence of slavery has weighed upon our country in a thousand disastrous ways. It has delivered our government, more or less, into the hands of political adventurers, and in some cases of conspirators; it has impelled us into a foreign war; it has awakened in us a rabid appetite for annexation; it has nursed and sent abroad bands of filibusters and pirates upon the territories of friendly and unoffending nations; it has bent our foreign policy out of its natural upright course, and thus given just offence to your and other governments; it has dishonoured our legislative halls with representatives, whose chief qualifications were love of slavery, hatred of free institutions, ignorance of religion, and skill in the use of the horsewhip, bowie-knife, and revolver; it has thus, with a few honourable exceptions, kept away from the direction of our public affairs the class of large-minded, able Christian persons, most competent to make our country happy at home and respected abroad. It has

impaired our perception of the difference between right and wrong—the noble attribute of Christians; it has made our national flag a mockery throughout the world; it has carried corruption into almost every department of the government.

But I am not aware that the rapacious and quarrelsome insolence of American diplomacy has been disavowed by the North. On the contrary, insult and injury to foreign nations, and, above all, to England, have, ever since America felt herself strong, been the road to popularity throughout the union, in the North as well as in the South.

It may again be said that this is the fault, not of the natives, but of the low Irish and Germans, whom America, with a blindness peculiar to herself, admits, almost immediately after their arrival on her shores, to political power—to political power exercised by universal suffrage, and engrossed, therefore, by the enormous uneducated majority, to the exclusion of the minority, small in every country, which possesses political knowledge and political morality.

There is much truth in this—as much as in the last excuse. I believe that slavery, foreign immigration, universal suffrage, and a sudden increase of power and prosperity, will account for all the public vices of America.

But it must be remembered that hateful or despicable qualities do not become less despicable or less hateful, the person tainted with them is not the less odious or contemptible, because we can account for their existence.

It is easy to prove that every man's qualities, all that distinguishes him from other men, depend on two accidents—the disposition with which he has been born and the circumstances in which he has been placed. If both have been good, he is excellent; if both have been bad, he is detestable; if one has been good, the other bad, his character is mixed: and so it is with nations. A nation is made what it is by its race and by its circumstances. But though we may feel that a man who has had the misfortune to be born with vicious propensities, and to be educated by vicious parents in a vicious society, must himself necessarily be vicious, we do not the less hate him and dread him, and, if we can, punish him.

And so again it is with nations.

In 1843 I gave a sketch of the conduct of the United States towards Mexico and Texas up to 1842. I will now carry on the story, taking the facts chiefly from an American authority—Mr. Jay's 'Mexican War.' Boston, 1844. The independence of Texas has been recognised, but not by Mexico. The war continued, supported on the Texian part by American citizens and American money, with the real assistance and formal disavowal of the American government. But the majority of the inhabitants were not slave-holders, and there was reason to fear that they would alter the existing constitution and abolish slavery. To avert this, it was determined to annex Texas, as a slave State, to the Union.

If Texas, said General Lamar (who had been its President), be left to stand alone, there is every probability that slavery will

be abolished. The negroes are yet but few, and could be emancipated without the slightest inconvenience.' *

The North made its usual and fruitless opposition.

By this act (said Dr. Channing) our country will enter on a career of encroachment and crime, and will merit the punishment and woe of aggravated wrongdoing. The seizure of Texas will not stand alone. It will be linked by an iron necessity to long-continued deeds of rapine and blood. Ages may not see the catastrophe of the tragedy, the first scene of which we are so ready to enact. Texas is a country conquered by our citizens, and the annexation of it to our Union will be but the beginning of conquests which, unless arrested and beaten back by Providence, will stop only at the Isthmus of Darien. Henceforth we must cease to cry Peace, Peace. Our eagle will whet, not gorge, his appetite on his first victim, and will snuff a more tempting quarry, more alluring blood, in every new region which opens southward.†

In March 1843, the venerable John Quincy Adams, the last of the great American presidents, published an address declaring 'that the annexation of Texas, in contempt of the rights of Mexico, and to secure the extension of slavery, would be such a violation of the constitution, and for a purpose so odious and profligate, as *not only inevitably to result in a dissolution of the Union, but fully to justify it.*' ‡

'How far,' says Mr. Jay, writing in 1849, 'this prediction was uttered in the spirit of prophecy, it is yet too soon to determine.'

In April 1844, Mr. Calhoun, as secretary of state, signed a treaty with Texas, annexing it to the Union. This treaty

* Cited Jay's Mexican War, p. 88.
† Ibid. p. 106. ‡ Ibid.

was rejected by the Senate. American policy, however, is rarely consistent. On March 1, 1845, the two Houses of Congress by a joint vote sanctioned the annexation.

On this vote Chancellor Vent, then the most eminent jurist in America, thus commented:

I deem it perfectly conclusive that the annexation of Texas by a concurrent resolution of Congress was unwarrantable, and in every view violent, unjust, unconstitutional, pernicious, and unprincipled, and will lead to the ruin of the Union.*

At this time, Mexico was still endeavouring to put down the Texian rebellion. The annexation, therefore, as between the United States and Mexico, was an act of hostility, such as the annexation of Louisiana by England at this instant would be. Mexico, however, was too weak to resist, and it seemed probable that the annexation of Texas would not entail a Mexican war.

But a Mexican war was wanted.

The addition of Texas (says Mr. Jay) operated but as blood to a famished wolf, and the appetite for Mexican provinces, instead of being satisfied, was stimulated to a ravenous ferocity. Texas had been gained under Mr. Tyler, and Mr. Polk had resolved that his presidency should be signalised by the annexation of California. That province had long excited the cupidity of the slave-holders, and great efforts were now made to stimulate public opinion in unison with the designs of the President. The newspapers teemed with articles on the fertility of California, and its vast importance to the United States. There were two modes of acquiring California—by negotiation and by war. The first was the most economical; the latter would probably be the most expeditious; but, unless commenced by Mexico, would be hazardous to the administration.†

* Cited Jay's Mexican War, p. 104.

† Ibid. pp. 107–109.

The mode adopted was war. The means by which the war was obtained are characteristic. The south-western boundary of the Mexican province of Texas was the River Nueces, dividing it from the provinces of Coahuila and Tamaulipas. It was thus defined on all the old maps.

Texas, however, on December 26, 1836, six months after she had revolted from Mexico, declared that the Rio Grande was her boundary, and thereby assumed sovereignty over a country about equal in extent to herself, about twice as large as the British islands—a country inhabited only by Mexicans, utterly opposed in feeling to the Americanised slave-holding Texians.

By the treaty of annexation the frontier of Texas was not defined, but it was so worded as to allow a claim to the Rio Grande. The Senate, however, then as now the most respectable portion of the American government, contained members opposed to this robbery.

I wash my hands (said Senator Benton) of all attempts to dismember the Mexican republic by seizing her dominions in New Mexico, Chihuahua, Coahuila, and Tamaulipas. The treaty, in all that relates to the boundary of the Rio Grande, is an act of unparalleled outrage on Mexico. It is a seizure of 2,000 miles of her territory, without a word of explanation with her, by virtue of a treaty with Texas to which she is no party. By this treaty the 30,000 Mexicans in the left half of the valley of the Rio Grande are our citizens. Taos, the seat of the Mexican custom-house, where our caravans enter their goods, is ours.* Santa Fé, the capital of New Mexico, is ours. Its governor, Annigo, is *our* governor, and is subject to be tried for treason if he does not

* See *post*, p. 103, the hanging and whipping of the Mexicans of Taos as traitors to the American government.

submit to us. Twenty Mexican towns are ours, and their inhabitants are suddenly converted by a stroke of the President's pen into American citizens or American rebels.*

In the beginning of 1846 General Taylor, at the head of an American army, crossed the Nueces, the western boundary of Texas, advanced to the Rio Grande, and established himself among a Mexican population opposite to the Mexican town of Matamoras, and blockaded the mouth of the Rio Grande.

The Mexicans did not venture to resent even this insult, but some of their troops continued to be posted on the north-eastern bank of the Rio Grande. This General Taylor treated as an invasion of American territory, attacked them, and then wrote to President Polk that 'hostilities might be considered as commenced.'

The President informed Congress 'that Mexico had invaded the territory of America, and had shed American blood on American soil.' The Congress declared 'that war existed by the act of Mexico;' and thus began the Mexican war.†

Well might the legislature of Massachusetts declare 'that such a war of conquest, so hateful in its object, so wanton and unjust, must be regarded as a war against freedom, against humanity, against justice, and against the Union.'‡

General Taylor issued a proclamation in the usual tone of invaders:

* Jay's Mexican War, p. 120.
† Ibid. pp. 140, 141, 143, 158.
‡ Ibid. p. 170.

We come (he said) to make no war upon the people of Mexico, nor upon any form of free government which they may choose for themselves.*

As a comment on this declaration, I extract the following passage from the contemporaneous proclamation of the American general, Kearny. It requires the inhabitants of New Mexico,

who had left their homes and taken up arms against the troops of the United States, to return forthwith to them on pain of being considered as traitors, subjecting their persons to punishment and their properties to confiscation. The undersigned (he continues) hereby absolves all persons within the boundaries of New Mexico from all further allegiance to the republic of Mexico, and hereby claims them as citizens of the United States.†

We have seen that the invaders claimed the inhabitants of the invaded country as citizens. Consistently with this claim, they treated those who resisted as traitors.

I copy this note from Mr. Jay:

Lieuts. Beal, Talbot, and others, bring important intelligence from San Orego. At Taos the court had condemned a large number of the insurgents. Eleven had been hung and many whipped. Six were hung the day that Lieut. Talbot passed through Taos. These executions caused great excitement among the Mexicans.‡

These insurgents were the Mexican citizens, whom the proclamations of the American generals had converted into citizens of the United States, and who, thereupon, as soon as they resisted the American troops, became rebels.

* Jay's Mexican War, p. 197.

† Ibid. p. 199. ‡ Ibid. p. 235.

The brutality with which the war was carried on equalled its injustice.

Soon after he addressed a similar proclamation to the Californians:

The undersigned by these presents absolves all the inhabitants of California from any further allegiance to the republic of Mexico, and regards them as citizens of the United States.

The ambition of a despot is violent and unscrupulous, but far less so than that of a republic.

During the horrible bombardment of Vera Cruz (says Mr. Jay), after a day of indiscriminate slaughter of men, women, and children, the French, Spanish, and English consuls in the city addressed, on the evening of the 24th of March 1847, a joint note to General Scott, asking a suspension of hostilities for a time 'sufficient to enable their respective compatriots to leave the place with their respective women and children, and with the Mexican women and children.'

The neutrals (answered Scott) might have left the place before the bombardment; and as to the Mexican women and children, the summons to surrender had been disregarded.* So the application was peremptorily refused.

The following descriptions of the bombardment are extracted from Mr. Jay's 'History of the War,' pp. 226, 7, 8:—

Mr. Hine thus describes his visit—the day of the surrender: 'Scarcely a house did I pass that did not show some great rent made by the bursting of our bomb-shells. During my peregrinations I came to a noble and lofty mansion, in which a terrible bomb had exploded, and laid the whole front of the

* Jay's Mexican War, p. 203.

house in ruins. While I was examining the awful havoc created, a beautiful girl of seventeen came to the door, and invited me into the house. She informed me, while her beautiful eyes filled with tears, that the bomb had destroyed her father, mother, brother, and two little sisters, and that she was now left in the world alone!

'During the afternoon I visited the hospital. Here lay upon truckle-beds the mangled creatures who had been wounded during the bombardment. In one corner was a bedridden woman; one of her withered arms had been blown off by a fragment of a shell. In another place might be seen mangled creatures of both sexes, bruised and disfigured by the falling of the houses and the bursting of shells. On the stone floor lay a child, with one of its little legs cut off above the knee. Not even the hospital had been spared: a bomb had descended through the roof and exploded among twenty already mangled wretches.'

The following is an extract from a Mexican account, written amid the ruins of the city:

'The enemy, in accordance with his character, selected a barbarous mode of assassinating the unoffending and defenceless citizens, by a bombardment of the city in the most horrible manner, throwing into it 4,100 bombs, and an innumerable number of balls of the largest size; directing his shots to the quarter of hospitals of charity, to the hospitals for the wounded, and to the points where it was believed that the public authorities would assemble with persons to put out the fire; to the bakers' houses, designated by their chimneys; and during the night raining over the entire city bombs, whose height was perfectly graduated with the time of explosion, that they might ignite in falling, and thus cause the maximum of destruction.

'His first victims were women and children, followed by whole families, perishing from the effects of the explosions, or under the ruins of their dwellings.

'At the second day of the bombardment we were without bread or meat, reduced to a ration of beans, eaten at midnight beneath a shower of fire. By this time all the buildings from

La Mercede to the Paeragua were reduced to ashes, and the impassable streets filled with ruins and projectiles.

'The third day the enemy alternately scattered their shot, and now every spot was a place of danger. The principal bakehouses no longer existed; no provisions were to be had.'

A letter from a Mexican, published in the newspapers, says: 'In some cases whole blocks were destroyed, and a great number of men, women, and children killed and wounded. The picture was awful. One deafening roar filled our ears, one cloud of smoke met our eyes, now and then filled with flame, and amid it all we could hear the shrieks of the wounded and dying. Altogether we cannot count our killed, wounded, and missing at less than 4,000, including women and children.' *

I pass from the cruelties of the American generals to their extortions, still quoting Mr. Jay:

On December 15, 1847, General Scott issued an order beginning with the portentous announcement:

'This army is about to spread itself over and occupy the Republic of Mexico, until the latter shall sue for peace in terms acceptable to the government of the United States.'

He then proceeds to decree that, 'On the occupation of the principal point or points in any State, the payment to the Federal government of this Republic of all taxes or dues of whatever name or kind heretofore, say in the year 1844, payable or collected by that government, is absolutely prohibited, as all such taxes or dues will be demanded of the proper civil authorities for the support of the army of occupation.'

Thus were duties on imports and exports, municipal, and all other taxes authorised by Mexico in time of peace and prosperity to be extorted by a foreign army from the miserable and impoverished people.

One would have supposed that such exactions might have satisfied the Americans.

* Among these 4,000 how many were the neutrals and the women and children, whom the General had not allowed to leave the city?

But, no; Mr. Polk had, from the moment he commenced the war, been sighing for PEACE.

General Scott had, indeed, conquered Mexico, but he had not conquered a peace, and an organised system of plunder was to effect what his troops and bombs had failed to accomplish.

Hence a second order was issued on December 31, 1847, from head-quarters, imposing on several of the Mexican States a contribution amounting to a million of dollars.

The following is an extract from this order:—

'On the failure of any State to pay its assessment, its functionaries will be seized and imprisoned, and their property seized, registered, reported, and converted to the use of the occupation, in strict accordance to the general regulations of this army.

'No resignation or abdication of office by any of the said Mexican functionaries shall excuse any of them from the above penalties.

'If the foregoing measures should fail to enforce the regular payment as above from any State, the commanding officer of the United States forces within the same will immediately proceed to collect in money or kind from the wealthier inhabitants (other than neutral friends) within his reach the amount of the assessment due from the State.'

This (says Mr. Jay) is the same General Scott who in his proclamation addressed to the Mexican nation from Jalapa, May 11, 1847, assured them that 'the army of the United States respects, and always will respect, private property.' *

The pro-slavery party, after having for fifty years misgoverned the Union, has now destroyed it. I say destroyed it, because it does not appear to me possible that the two great nations of Federals and Confederates, which the rebellion of the South has formed, can ever be reunited.

* Jay's Mexican War, p. 236.

The rupture has shown that they both possess in a high degree the great qualities to which we give the general name of patriotism. By the North and by the South wealth has been poured out; all the pleasures and all the comforts of life have been abandoned; fatigue, danger, and disease have been encountered. Every sacrifice, in short, which could be made in the cause of their country, has been made by each of the parties to this unhappy contest, as cheerfully, as widely, and as energetically as could have been done in the best times of Greece or of Rome.

But there is a dark side of the picture.

Rebellions are generally unwise. If they are unsuccessful, they produce pure evil. If they succeed, the gain seldom compensates the suffering; but they are almost always justifiable. They are almost always the slow result of an oppression which has become intolerable. *This* rebellion was wanton. It was made in the childish rage of mortified vanity. It was not produced by the tariff. There is a protectionist party in the South, as there is in all ill-educated countries, and her enormous prosperity shows that the protectionist tariff, though a grievance, did not seriously interfere with the welfare of the people. The imperfect execution of the Fugitive Slave Law, and the denunciation of slavery by the abolitionists, were rather sources of irritation than of actual loss; and secession, so far from being a remedy, necessarily increased them tenfold. The real source of the rebellion was the loss of power. The South refused to tolerate a Northern presi-

dent; she refused to surrender her monopoly of patronage and place. Her public men preferred the destruction of an empire greater than any that the world has ever seen—the certain calamities of civil war, and the danger of further calamities, which imagination is unable to paint—to the loss of their own temporary importance and power and emolument. History does not afford an example of equal wickedness among the leaders, or of equal folly among the people. The faults of the North are more excusable. No Englishman can blame her for expressing her disapprobation of slavery, or for evading, as far as she could, the hateful and degrading duty of restoring fugitives to their masters. The protectionist tariff imposed by the North on the Union was a grievance, and, if those who imposed it knew enough of political economy to be aware of its mischievous effects, it was an oppression. But probably they did not. The sophistries by which protectionism is defended are so plausible; they suit so well the prejudices of men possessing the amount of mental culture which is common among American statesmen, that I have little doubt that those who proposed and supported the protectionist tariffs which preceded the secession really supposed them to be useful.

To those who believe that a population of eight millions, bold and warlike and determined, inhabiting a country half as large as Europe, cannot be conquered, or, if conquered, cannot be subjugated, or, if subjugated, cannot be forced to reenter the Union as loyal, or even useful, fellow-countrymen with their conquerors, it may appear that the

North ought to have declined a hopeless contest, and to have let the South peaceably secede. But it must be recollected that such conduct would have been an admission that the Union is a mere agreement, from which any member may withdraw on any pretext, however frivolous. For anything more frivolous than the pretext put forth by the South cannot, as I have already shown, be conceived. In order to preserve any cohesion among her unseceding members, the North was bound to make secession a matter of difficulty and danger, to be achieved only by encountering the calamities of war. In her resistance to secession, and in the sacrifices by which she supports that resistance, I sympathise with the North, and admire her.

But other parts of her conduct appear to deserve severe reprehension. The first use which she made of the absence of the Southern members, was to enact a tariff so monstrous in its ultra-protectionism, that those who proposed and supported it cannot plead ignorance of its mischievousness. It was a bribe offered to Pennsylvania, at the expense of all the rest of the Federal States. In the second place, while professing to consider the seceders as rebels, while pouring out against England for calling them belligerents abuse and threats in every form, she treats them, when it suits her, as enemies. She confiscates, for instance, their property. This is a right of war, though seldom used. But as against rebels it is a right which cannot be enforced except individually, case by case, and after trial and conviction. The North applies it to whole classes of persons without individual enquiry.

Again, she refuses to exchange prisoners. This is treating the seceders as rebels.

But, with a single exception, she does not venture to try them. Now, if they are enemies, to detain them in prison untried is a right of war; but if they are accused of rebellion, no rights of war exist against them. They are the fellow-subjects of their captors, and are entitled to be tried or discharged. Again, she imprisons Americans, or even foreigners, suspected of merely sympathising with the South.

This is shameless revolutionary despotism, and, so far as it is exercised against foreigners, is a breach of international law. What would Mr. Buchanan have said if, during the Crimean war, we had sent Americans to Newgate for expressing, as many of them unreservedly did, their wish that Russia might beat us? Or, to take a more nearly parallel case, if, during the Canadian rebellion, we had so treated them for sympathising with Papillon? In this matter, as indeed in every other, America has different measures for herself and for us.

But the fault which shows most the sour, uncandid, irrational state of mind of the Northern Americans, is the manner in which they have resented our designation of the rebels as belligerents, and our reminding, by proclamation, English subjects that they are bound by law to observe neutrality between the belligerents.

I think that the Act of Union converted the American States into one nation, and therefore that the seceders *are* rebels. But this is a legal question of considerable

difficulty, on which American statesmen and lawyers have differed. Many great authorities treat the Act of Union as a mere treaty, which left the States still sovereigns, still entitled to allegiance from their inhabitants.

And many others have treated the breach of the constitution made by the introduction of Louisiana into the Union as having restored to the States, if they had lost it, the right of secession. Such was the opinion of an eminent Northern statesman, Josiah Quincy. When the Bill for that purpose was in its progress, he said—

> If this Bill passes, the bonds of this Union are virtually dissolved: the States which compose it are free from their moral obligations, and, as it will be the *right* of *all*, so it will be the *duty* of *some* to prepare definitely for a separation; peaceably if they can, violently if they must.

More than forty years afterwards, on June 5, 1856, when the contest between Buchanan and Fremont, a Northern and a Southern, was raging, Mr. Quincy repeated the same doctrine:

> The continuance in Union, he said, in 1811, was simply a question of expediency, and so has continued until the present. To the Free States, their continuance in this connection has ever since been, and is now, not the result of obligation, but of expediency.*

The election of Mr. Buchanan produced disunion societies throughout the North.

I copy some of the advertisements and speeches from

* Address on the Nature and Power of the Slave States; the Duties of the Free States. Boston, 1856.

the article on 'Dred' in the 'Quarterly Review' of April 1857.

☞ New York States Disunion Anti-Slavery Convention.—A Disunion Anti-Slavery Convention for the State of New York will be held at Albany the second week in February 1857.

☞ State Disunion Convention.—We the undersigned, citizens of Worcester, believing the result of the recent Presidential election to involve four years more of pro-slavery government, and a rapid increase in the hostility between the two sections of the Union:

Believing this hostility to be the offspring, not of party excitement, but of a fundamental difference in education, habits, and laws:

Believing the existing Union to be a failure, as being a hopeless attempt to unite under one government two antagonistic systems of society, which diverge more widely every year:

And believing it to be the duty of intelligent and conscientious men to meet these facts with wisdom and firmness:

Respectfully invite our fellow-citizens of Massachusetts to meet in Convention at Worcester on Thursday, January 15, to consider the practicability, probability, and expediency of a separation between the Free and Slave States, and to take such other measures as the condition of the times may require.

The following is an extract from a speech made at a Boston meeting in July 1857.

Mr. President,—In the dark and troubled night that is upon us, I see but one star of hope; and I thank the Abolitionists of Massachusetts, not alone that they first told the secret of slavery twenty-five years ago to the astonished nation, but that they have told another secret more recently, more daringly, to a nation yet more astonished—told the secret of anti-slavery, and told it in one word—Disunion! (Enthusiastic applause, long continued.) Mr. President, as God is in heaven, our destiny and our duty are to be found there. It is our only hope.

This is the comment on it by another speaker:

I respond to that sentiment: 'Peaceably if we can, forcibly if we must!' (Loud cheers.) I think we are unworthy to stand in the old cradle of Liberty if we shrink even from the baptism of blood, if such be the will of God: and I am not sure but it is; for if there was ever a time when we might say, 'There is no remission of sins without the shedding of blood,' we have reached that time; and if even by seas of blood we can wash out our sins and stains, we may thank God for that baptism, and accept salvation even on terms so fearful. I think we had better familiarise our minds to the possibility, at least, that the streets of Boston may yet run with blood.

I do not believe that ever yet a nation wandered so far from the true spirit of freedom, justice, and humanity, as we have gone, and then returned, without passing through that metaphorical Red Sea; and though I know that war is a curse always, and, probably, always a crime too, yet I think we have gone beyond the time to question the right of war; for I expect scenes of violence, just as I expect Etna to vomit the blazing bile from her sickening stomach, in obedience to the same law of God which operates upon the human mind as well. And I think, if we escape even with blood and battle — the battle where the 'garments shall be rolled in blood, and accompanied with confusion and noise'—that even then, considering how great a loss we have sustained, salvation will be cheap even at such a price as that. (Applause.)

'It is useless,' says a less excited arguer, 'to disguise this state of things, or to pretend that there is any present probability of restoring the harmony that existed in the workings of the government, when there was a common agreement, North and South, that slavery was a nuisance, and an evil to be got rid of at the earliest practicable moment. Such was our condition when the Union was formed and the constitution adopted. At a later period a comparative harmony was preserved by compromises on the question. Now the old idea is repudiated by the slavery-men, and the compromise system seemingly abjured by all. We

'are thus arrived at the point of collision between the opposing 'forces in the government. While this state of things continues to exist, there can be no peace. There can be a triumph of one party over the other, but that is all. How long is political union possible under such circumstances? There may be a period or periods of peace between the combatants, but they will ever be temporary, and partake of the character of a truce, or of submission of the vanquished to the victor. Inevitably, however, they must come to an end, and that end is separation of the Free and Slave States; and it is the part of wise statesmanship, both North and South, among all dispassionate men, to prepare the way for this result in a manner which shall not disgrace the civilisation of the age in which we live.'

Even a Northern statesman, a candidate for the presidency, in a speech delivered on June 26, 1856, in Albany, the capital of New York, foretold and countenanced disunion if Colonel Fremont were elected.

We now see (he said) a political party presenting candidates elected by the Free States alone. Can those engaged in such a measure have reflected on the inevitable consequences of their success. (Cheers.) Can they have the folly or the madness to believe that our Southern brethren would submit to be governed by such a chief magistrate? (Cheers.) Supposing that the South, having a majority of the electoral votes, should declare that they would have only slave-holders for President and Vice-president, and should, by their exclusive suffrages, elect such to rule over us at the North—do you think that we would submit to it? No, not for a moment. (Applause.) And do you believe that your Southern brethren are less sensitive on this subject than you are, or less jealous of their rights?

Now, if secession be rebellion, these disunion societies were treasonable—many of these speeches were acts of treason. Yet not one of them was followed by

prosecution, or seems even to have excited surprise. The last which I have quoted, Mr. Filmore's, was an electioneering speech. It was adapted to the feelings of his audience—a Northern audience: and we see that when, under certain circumstances, he threatened secession on the part of the North, and in others justified secession on the part of the South, he was received with cheers and applause. Neither he nor his hearers could have held secession to be treason.

And it is for not deciding this legal question against the South—for not holding in opposition to some of the highest authorities in the North as well as in the South that the seceding States are not sovereign, and that the seceders are rebels—that England is threatened with the lasting enmity of the North, and with the loss of Canada, as soon as the Federal armies shall be at leisure to seize it.

I must add that the war seems to be carried on with unusual ferocity.

This is an extract from a speech made by General Lane, the Federal general in Kansas.

In my opinion, this war will never be successfully carried out so long as an army marches through Slave States, as a boat goes through a flock of ducks. They fly up on its approach, and nestle down as soon as it has passed. The boat is safe, and so are the ducks. When you march through a State, you must so march that traitors will feel the horrors of war. Take the Union man by the hand, but lay waste the property of traitors.

The Hon. B. Lowry was a candidate for the Senate of Pennsylvania.

A Mr. Krick writes to him to say that he is accused of using violent expressions at a public meeting.

This is an extract from his answer :—

Erie: Aug. 19, 1861.

I *did* say that were I President of the United States I would arm the slaves and tell them to fight for their freedom, and to put to death every disloyal master who trampled on the Stars and Stripes. And I then gave it as my opinion that the government should confiscate the property, real and fictitious, of every rebel, and substantially averred that I would give the slave of a master in arms against the government 160 acres of his master's plantation for his master's scalp.

What I then said to the citizens of Erie, I had said before to the high functionaries of the government. *I reassert those sentiments now.* They are the product not of momentary impulse but of mature judgment. They are the sober convictions of my heart. Their correctness irresistibly impressed me when first I saw this storm impending. As long ago as when I stood at old John Brown's prison-door, and heard Henry A. Wise declare to the thronging crowd that, had Fremont been elected to the presidency, he would have marched at the head of an army, hung the President, and sacked the capital; and when I witnessed the wild enthusiasm, and heard the deafening shout with which 5,000 Virginians applauded the treasonable declaration, I then saw what we were ultimately to meet, and how earnestly and effectually we should meet it.

Unfortunately, I am a candidate for civil office, and as such am fated to have my actions misinterpreted and my expressions garbled. The people *have* a right to know what are the principles of every man who solicits their suffrages. I have endeavoured to indicate my own convictions in this brief letter. Such as they are I present them, through you, for public consideration, and by them I must stand or fall.

I am, most truly, your friend,

M. B. Lowry.

Mr. Lowry's proposal, publicly made and deliberately repeated, to give to the slave of a master in arms against the North 160 acres of his master's plantation for his master's scalp, was apparently approved, for he was elected.

I have commented elsewhere on the destruction of the Southern ports by the Slave fleet, an act of barbarism unparalleled in modern war.

We know so little of what is passing in the South, that I cannot compare the public feeling there with that of the North. It cannot be more sanguinary, and is not likely to be less so.

. .

In 1842 I could say that France was one of the great countries that enjoyed the most popular institutions. I could say that, whereas formerly the conduct of the nation was decided by the character of the ruler, now the conduct of the ruler was decided by the character of the nation.

All is now changed. France has abdicated. She has renounced not merely freedom of action, but freedom of will: almost freedom of thought. Still, abject and submissive as she is, she exercises some influence over her master. He does not venture to drive her in any direction which he believes to be absolutely repugnant to her. As far as is consistent with the preservation of his power, he wishes to consult her feelings, or what he supposes to be her feelings.

From the passions which he tries to gratify, we may infer what are the passions which he believes to rule her.

These passions are pride, vanity, and ambition—pride hitherto embittered by lurking self-distrust, vanity equally desirous of ill-founded and of well-founded admiration, and ambition utterly indifferent to the means which it employs and to the sufferings which it inflicts.

He supports the *pride* of the French by maintaining a fleet and an army twice as large as the defence of the country on the most extravagant scale can require. For the first time since 1812 France feels that she is the object of universal dread: that she has accumulated the means of injuring mankind in greater abundance than they existed even under her most aggressive despots. Notwithstanding all her powers of self-deception, she must know that she is hated. But she must also see that that hatred will provoke no immediate attack, and she does not perceive that the waste of her industry, the growth of her debt, and the depravation under despotism of her public men, prepare for her frightful reverses.

He gratifies her *vanity* by wars undertaken, as he boasts, wantonly (in his own strange language, for an idea), and by victories which the almost incredibly bad generalship of his foolish enemy has rendered brilliant.

He pleases her *ambition* by actually robbing an ally of territory, and by threatening further plunder.

All that he does is done in breach of solemn engagements, and of declarations which seem to have been proclaimed only for the purpose of being falsified.

He prefaced his destruction of the French constitution by the remark that he was the only Frenchman who had

sworn to maintain it. He announced that the Empire was Peace, and in ten years he has made two great wars, three small ones, and is now preparing a sixth. He expressly disclaimed any intention of taking Savoy, when an agreement for surrendering it to him had already been made.

He promised freedom to Venetia, and in three months abandoned her to Austria. He engaged that Parma, Modena, and Tuscany should be restored to their sovereigns, and allowed his dependent, Victor Emmanuel, to seize them. He protected the Pope and insulted him—protected Francis II. and abandoned him.

I said in 1842 that France was checked by no feeling of faith or of public morality—that she did not pay to virtue even the homage of hypocrisy. His conduct shows that this is the opinion of Louis Napoleon. It shows his belief that there is no amount of fraud or mendacity that will disgust her.

He has been supposed to be a good judge of national character. The ease with which he made himself master of France has been attributed to the sagacity with which he discovered that the French were indifferent to liberty, incapable of combination or of resistance, and to be governed by a domestic policy addressed to their fears, and by a foreign one appealing to their vanity.

As it is evident that he is a bad judge of men individually, it does not seem probable that he estimates them well collectively. In his residence in England he learned so little of the English character that, after the 'attentat'

of 1858, he committed the enormous blunder of thinking that an alien act could be extorted from us by threats.

During the first seven years of his life he was surrounded by the splendour of a court. The next eight he passed in Germany, looked down on by the Germans, who would scarcely admit the Bonapartes to be gentry, seeing nobody but his mother and her suite. Afterwards he lived in Italy and in Switzerland, among Italians and Swiss, but not with French people. This long exclusion from the society of the higher classes of his countrymen, and, in a great measure, from the higher classes of the foreigners among whom he resided, must have prevented his sharing in the great progress in political knowledge made by the educated portion of the French between 1814 and 1848. The books of his uncle, and the conversation of his mother and of her friends, all old Imperialists, formed his political education. In France he never lived except as child, prisoner, and sovereign.

It may seem a paradox, but I am inclined to think that it is to his want of sympathy with the *feelings* of the higher classes in France, and to his dislike or ignorance of their *opinions*, that much of his success is to be attributed. His opinions and feelings are those of the French people from 1799 to 1812, as they were fashioned by Napoleon during his thirteen years of despotism, war, and victory. Those opinions and feelings, all modified, some of them abandoned, by the educated classes, are still those of the multitude. They despise parliamentary government, despise the Pope, despise the priests, delight

in profuse expenditure, delight in war, hold the Rhine to be the French frontier, and that it is the duty of France to seize all that is within it, and have no sympathy with any foreign policy except one of aggression and domination. The French lower classes and he, therefore, perfectly agree. It is not that he has learned their sentiments (how could he in prison or in exile?), but that they are his own. I have no doubt that the little that he heard, and the less that he attended to, from the persons whom he saw between 1848 and 1852, about liberty, self-government, economy, the supremacy of the Assembly, respect for foreign nations and fidelity to treaties, appeared to him to be the silliest trash.

So it would have appeared to his uncle. So it would have appeared to all the lower classes in France. So it would have appeared to the army, drawn principally from those classes, and exaggerating their political errors.

As soon, therefore, as he appealed from the aristocracy and the bourgeoisie to the *peuple* and the army, as soon as the *peuple* and the army recognised the long-remembered tone and feelings and opinions of the Empire, they rushed enthusiastically to his side.

I do not, as many persons do, admire him for having shown quickness of apprehension in divining the sentiments of the uneducated classes, or sagacity in conjecturing them. He simply took them for granted. He supposed the Orleanists and the Legitimists to be governed by their prejudices, the Parliamentarians by their vanities or by their interests, and the rest of the nation to be

Bonapartist, to participate in the *Idées Napoleoniennes.* Those were his own ideas, and he naturally believed that they were those of the mass of the people; and he was right.

In one respect, however, he differs from them. They desire a war with England. He dreads one. They desire one because they undervalue its difficulties, its sufferings, and its dangers; and because, like all uneducated persons, they are governed more by passion than by reason: perhaps, even if they were aware of the sacrifices which it would entail, they would be ready to make them in order to gratify their vanity, their ambition, their envy, their hatred, and, above all, their thirst for revenge.

He knows from experience that France cannot, or will not, endure a long war. A short war, supported by loans, ended before the increased conscription and the increased mortality among the conscripts have been felt, and before commercial and manufacturing embarrassments have become severe, may be popular, at least while it is successful.

But the French cannot bear increased taxation. The provisional government ruined itself by its forty-five centimes, that is to say, by adding forty-five per cent. to the direct taxes. It is almost the only act of their administration that is recollected. In the provinces they still go by the name of *Ces Gredins des quarante cinq centimes.*

Nor will they long tolerate a great increase in the loss of their sons and brothers by the conscription. About

300,000 young men attain the age of twenty every year, and become subject to the ballot. Half of them are unfit for service, from want of health, or height, or from special exemptions; 150,000 remain. Of these, during the Crimean war, 145,000, or about fourteen out of fifteen, were taken. In peace, about four-fifths of the conscripts return to their villages; in ordinary wars, not one-third; in sanguinary wars, not one-half. During the later years of the first Empire none returned. Every conscript was mourned over as lost.

Many of my French friends have expressed to me their belief that the increasing grief and terror in the provinces would have rendered it impossible to carry on much longer the Crimean war.

Louis Napoleon knows England too well to believe that a war with her can be short, unless a successful invasion should enable him to dictate a peace in London, or some disaster should force him to submit to a peace dictated by us in Paris. He knows that the first is improbable, and that the second would destroy him.

As I said before, he therefore dreads a war with us: and yet I believe that he is preparing the means of making one.

I do not infer this from his military, or even from his naval, preparations. They are not necessarily intended for actual use. They gratify the pride and the vanity of the French; and their cost is a recommendation to him. He has the delight in expenditure for its own sake which misers have in saving.

The evidence on which I found my opinion is the long-continued, systematic attempt to inflame against England the old national enmity of France. All the provincial papers are in the hands of the government. The constantly-recurring topic in them is the perfidy and the malignity of England. England is represented as opposing all the diplomacy of France, as resisting all her aggrandisements, as snarling and growling at her acquisition of Savoy, as threatening her if she accept Sardinia, as trying to drive the Pope from Rome because France protects him, as trying to separate the Danubian provinces because France wishes to unite them, as preventing the Suez Canal because a Frenchman proposed it—in short, on every occasion, and in every part of the world, as putting obstacles in her way.

To these complaints, some of which are not without foundation, others are added, of which the ignorant lower classes of France do not see the absurdity.

They are told that England excited the Syrian massacres in order to punish the Maronites for being under French protection, and that she now shields her tools, the Druses. That she is making the barren waterless sandbank of Perim a Gibraltar, in order to bar the Red Sea, and make the Suez Canal useless. That we sent Garibaldi to Sicily and Naples to destroy, in Francis II., a friend of France. That the enormous conscription, and the naval expenditure of France, are occasioned by the aggressive armaments of England; that we are preparing to lay waste all her coasts, to burn all her arsenals,

to subsidise against her a new coalition, and perhaps to lead its armies again to Paris.

The Emperor's moderation, his love of England, and his love of peace, are described as the only obstacles to a violent rupture. But the people are prepared for those obstacles at length giving way.

'The Emperor,' they are told, 'is getting tired of his insolent and hostile and quarrelsome allies. He is getting tired of a peace which is more expensive than a war. Some day the cup will flow over. Il en finira avec eux, will dictate a peace in London, will free the oppressed Irish nationality, will make England pay the expense of the war, and then, having conquered the only enemy that France can fear, will let her enjoy for the first time real peace, a reduced conscription and low taxation.'

Such is the language of the provincial papers and of the provincial authorities, the instruments, I repeat, of the government: and it has its effect. There was never a time when a war with England would be so popular.

He does not wish for one. But he must know that nothing is safe in France, and, least of all, the popularity of a government. Her caprices are as violent as they are sudden. They resemble those of a half-tamed beast of prey, which licks its keeper's hand to-day and may fly at his throat to-morrow. He knows from experience that war is the most powerful of counter-irritants, and that, of all wars, the most exciting, and, at its beginning, the most popular, would be a war with England. He is preparing therefore the means, moral as well as material, of making

one. He hopes, I have no doubt, that he shall not be forced to use them; but he has been accustomed all his life to run the most desperate risks, to realise the most extravagant conceptions, and to retrieve the most hopeless failures, and, mixed with his fears, there must be a desire to play for the greatest stake that remains.

The reader will perhaps be interested by having an opportunity of comparing my English view of the political feelings of the French and of their master with a French view of them. I extract, therefore, from my memoranda made in one of the provinces of France in 1861 a conversation with a Legitimist, intelligent, and, for that party, moderate. As I cannot name him, the value of his opinions must depend on the internal evidence of their sagacity.

'What,' I asked, 'has been the effect on Louis Napoleon's position of the late debates in the Corps Legislatif?'

'Mischievous,' answered A. B.; 'everyone has long disapproved of his policy, but till now no one knew how widely that disapprobation extended. The debate has shown it to be universal, and the knowledge of that fact has made each man's private disapprobation more confident and more intense.

'The chambers have told him that he has to choose between folly and treachery, to confess himself the dupe or the accomplice of Cavour. That if he does not see that Italian unity is an almost fatal blow to France, he is a fool. That if, seeing it, he has sacrificed the interests of France to his hatred of the Pope, or to his fears of the Carbonari, he is a traitor.

'He has, in fact, left to himself and to us only two modes of escape. He must break the Italian unity by seizing Naples, or he must restore the balance by seizing the Rhine. And there is not a Frenchman who would not, under the circumstances of the case, endure a war of years for either of those purposes.'

'Which of those attempts,' I asked, 'do you think the more probable?'

'The seizure of Belgium and the Rhine,' he answered. 'Europe is now, like our earth, a crust under which destructive gases are being generated, and are accumulating. The first explosion will probably be on the Danube; you may hear there the sounds of an approaching earthquake. Hungary and Croatia will rise, perhaps even Bohemia, for all the Sclavonic races are disturbed.'

'But how,' I said, 'will that enable *celui-ci* to get the Rhine?'

'Everything,' he answered, 'is possible as soon as a war breaks out.

'Prussia may assist Austria. He may invade Prussia in defence of the principle of non-intervention. Prussia may think that Austria is breaking up, and may join her enemies in the hope of getting some of her fragments. He may take part with Austria, and seize Rhenane Prussia as his payment. Or he may join Prussia, take the Rhine, and indemnify Prussia with Hanover and Saxony.

'Nothing,' I repeat, 'is impossible when once the next war has broken out.

'Which of the two courses of events he would prefer, I doubt.'

'There are strong reasons for and against each. The seizure of the Rhine involves a war with you—a war which he always contemplates, always prepares for, always perhaps intends, but yet dreads and defers. A Hungarian insurrection may force it on him. He cannot be a mere spectator of such an event; but if Hungary remain quiet, he may prefer the easier seizure of Naples. But there, again, is a peculiar danger from which a German war is free—the Unionist dagger. As all his policy is selfish and personal, he may rather encounter dangers to France than dangers to himself. He may rather expose us to ruin and dismemberment by an European coalition, than himself to a dagger or a bomb. And such has been the policy of all parties, that he will be able to say that he has right on his side.

'The public law of Europe, and indeed of America, seems now to be that nations are mere voluntary partnerships, and that every individual and every aggregation of which they consist has a right to dissolve partnership at pleasure; that there is no such thing as allegiance; that neither kings nor aristocracies have any rights against the people—that is to say, against the uneducated majority. Nothing will be easier than to induce, what he will call the Neapolitan people, the lazzaroni of the towns and the peasantry in the country, to discard Victor Emmanuel and demand a French prince or annexation to France.

'And who is to complain if we require their will to be obeyed?'

'Louis Napoleon has a right to say that the abolition of

all rights of sovereignty and of aristocracy is not his doing. He carefully preserved them. He accepted Lombardy, not as the gift of the people, but of the sovereign.

'He reserved the rights of all the existing rulers, merely requiring their rule to be liberalised. He protected, by French arms, the two who alone remained at their posts; he protested in favour of even those who had abandoned their thrones.

'The present state of Italy, he may well say, is not my doing. To England he has a right to say, "Vous avez fait faire;" to Piedmont, "Vous avez fait;" to the rest of Europe, "Vous avez laissé faire."

'So absurd and so mischievous has been the policy of all parties, that it is difficult to say which is most to blame.

'Louis Napoleon's wisdom left him as soon as he had made the peace of Villafranca. It was the best arrangement for everybody;—for us, to whom it left Italy in the state in which it is our business to keep her, a divided and therefore inoffensive neighbour; for Austria, whom it left safe in Venice and unhumiliated in Florence; for the minor Italian powers, to whom it left the autonomy which they have enjoyed for fifteen centuries; and for Piedmont herself, whose wealth and power it doubled, and who, if she would have kept quiet, might have enjoyed an indefinite period of prosperous peace, protected by France, and friendly with her neighbours.

'But Piedmont listened only to her vanity and to her ambition. She resolved to play double or quits. Whether

the Piedmontese people have gained by being absorbed in this new disjointed revolutionary kingdom of Italy, even if that kingdom shall continue to exist, remains to be seen.

'It was Louis Napoleon's business to restrain her. He pretended to do so, but secretly encouraged her.

'What he did secretly you did openly; such conduct was franker and bolder, but therefore only the more mischievous. The rest of Europe looked on sulkily. And see the result. Italy is in revolution—a disease from which it takes generations to recover—a disease which we have suffered for seventy years, and from which we seem to be as far from recovery as we were in 1790. Piedmont has staked her liberty and her independence. France sees a new rival, probably a new enemy, start up on her very frontier, more formidable than any power on the continent, more populous than Prussia, more homogeneous than Austria, more intelligent than Russia or Spain. And she will probably have to go through a war, or a series of wars, before she can either dismember this new giant, or obtain such an extension of territory as shall restore her just preponderance.

'As for you, besides sanctioning the abolition throughout Europe of all public law—an abolition for which you will suffer severely—you will have compelled us to absorb your dependency, Belgium, and to break the force of your ally, Prussia, or to extend our dominion or our protectorate over all Southern Italy. All the splendid ports of the

Neapolitan dominions will be ours, or open to us, and their marine will be virtually a part of ours.

'Such is our master's programme. There is some violence, some perfidy in it. But those defects are inherent in all large comprehensive schemes. They are incidental to *la haute politique*. Our master will not feel them to be objections, nor shall we.

'It is subject, however, as I said before, to one real objection. It will drive the Carbonari mad. Still I believe that he will not abandon his scheme; but he will hesitate, he will procrastinate, perhaps, until he is engaged in his war on the Rhine, and then it may be too late. Italy may be consolidated, and we may have to content ourselves with getting in return the Rhine from Strasbourg to Rotterdam. But it will be a bad compensation for the union of Italy. On the other hand, it is quite possible that our success on the Rhine may be so decisive and so rapid that we may be able to carry into effect both schemes. Austria may be paralysed by Hungary; Prussia may be wasting her forces in her absurd quarrel with Denmark; *you* may find us a more dangerous enemy at sea than you suppose us to be. The Northern States of America may quarrel with you and give us the aid of their navy, the most formidable for its size in the world. They are quite mad enough and wicked enough for that, or for anything else. We have twice as much disposable revenue as you have, and for the first three months we shall have more sailors, and perhaps better ships. The war may not last three months, and then we turn southward.

'One thing only pleases me in this vista of treachery, violence, and crime. That all the suffering will be deserved. That *you* will be punished for your folly, *Germany* for her cowardice, and *Piedmont* for her wickedness. The next ten years will be a period of great moral retribution. Every nation will suffer, though not perhaps in proportion to its demerits.

'I own,' I said, 'that this is no consolation to me. Crimes and follies are what I expect from nations. The object of punishment is not vengeance, but prevention. There is no use in punishing nations, for they are incorrigible.'

'I,' he answered, 'am not so philosophical. I wish to punish, whether I can correct or not. Nothing should tempt me to leave Piedmont unpunished. Her insolence, her impudence, her avidity, her falsehood, her treachery, form the most revolting picture of political wickedness that the world, ancient or modern, has ever seen. And you wish to reward her for all this by putting her at the head of a great nation, and to reward the author of it all, Cavour, by making him a great historical personage.'

'And is he not?' I asked.

'If we admit,' said *A. B.*, 'that his end—Italian unity—is a good one, and a possible one, which I hope that he believes, and that the end sanctifies the means, which I fear that he believes, he is a hero. He has played his part with infinite boldness and skill. His conduct of the late debate in the Turin chambers was a masterpiece of both. He defied the French chambers, but flattered the

Emperor, and managed to throw on him the whole responsibility of keeping the King of Italy out of Rome. I sympathise with him, and with Garibaldi. I should be sorry to see either of them hanged, though if any political crimes deserve hanging theirs do. But I have no sympathy with Piedmont. She and her vulgar king have been the blind, unreluctant, unintelligent instruments of Cavour's ambition and of Garibaldi's fanaticism. My detestation of her crimes is not qualified by any admiration.'

I have little to alter in what I have said of the character and conduct of England. When I wrote, the great experiment of reform had been tried during only ten years. It has now lasted for thirty years.

It does great honour to the British people that the increase of their influence in the government has been shown, as far as domestic affairs are concerned, principally by legislation for the sake of the poor, the weak, and the unrepresented. The abolition of slavery, the regulation of children's labour, the introduction of a poor-law into Ireland, and the abolition of the corn laws, the four most important measures of this kind which have been carried during the last thirty years, all originated in the public will, of which the administration was not the guide, but the interpreter. All of them were measures involving the certainty of considerable sacrifice, and the contingency of much more; for they were experiments with respect to which everyone could see that the results must be important, though no one could say precisely what would be the

details of their direct operation or what might be their remote or collateral consequences.

The changes which have taken place in our conduct towards other communities have also been improvements.

The increased influence of the Democratic element might have been expected to show itself in an oppressive or at least troublesome treatment of our dependencies, in selfish tariffs for the supposed protection of domestic industry, in a litigious or irritated behaviour towards foreign nations, or by an adherence to the portions of international law which were most favourable to our power.

Our conduct has been, on every point, the reverse. We have forbidden privateering, we have renounced the right to capture enemies' property in neutral vessels, we have abolished the last remnant of our protective policy, we have granted to our colonies the right to manage and, as incidental to that right, the right to mismanage their own affairs, and our diplomacy has been more patient, more long-suffering, and therefore more wise, than that of any great warlike and spirited nation ever was since diplomacy was invented.

In a letter of M. de Tocqueville's, dated November 15, 1857,* he says:

The affair of India and that of the Crimea show how little sympathy there is for England abroad. There was everything to interest us in your success—similarity of race, of religion, and of civilisation. Your loss of India would have served no cause but that of barbarism. Yet I venture to affirm that the whole

* Vol. ii. p. 44, English translation.

continent, though it detested the cruelties of your enemies, did not wish you to triumph. Much of this is without doubt to be attributed to the evil passions which make men always desire the fall of the prosperous and the strong.

But much belongs to a less dishonourable cause—to the conviction of all nations that England considers them only with reference to her own greatness; that she has less sympathy than any other modern nation; that she never sees what passes abroad, never enquires what they are thinking about, feeling, suffering, or doing, but with relation to the use which England can make of their actions, their sufferings, their feelings, or their thoughts, and that when she ought most to care for them she really cares only for herself. All this is exaggerated, but not without truth.

Now I am ready to admit that the foreign policy of England is selfish; that her conduct towards foreign nations is governed by what she believes to be her interest; that foreign rulers have no right to expect her to interfere for them against their revolted subjects, however wanton that revolt may be; and that foreign revolutionists have no right to expect her to interfere against their tyrant, however atrocious his tyranny may be.

But I deny that this conduct is peculiar to England. I deny that her selfishness exceeds that of other nations. Every nation is governed by her own interests, and none so absolutely, so remorselessly as France. 'It is her traditional policy to keep all her neighbours poor, weak, and divided. One of the most liberal of her rulers, Cavaignac, avowed that rather than allow Germany to be united under one head he would make war. The conversation which I have just inserted represents faithfully the feelings with which France looks at the creation of a

United Italy. So far from believing that England is peculiarly unsympathetic, I continue to believe that she is peculiarly sympathetic.

That she does not frequently allow her sympathy to interfere with her interest is true; but what other nation does so? Was it sympathy for the Belgians that led France to besiege Antwerp? No; it was the desire to dismember the kingdom of the Netherlands. Was it sympathy for Turkey that led her to besiege Sebastopol? It was the desire to confine Russia within the Black Sea. Was it sympathy for Italy that led her to attack Austria in 1859? It was the desire of the master of France to consolidate his throne by a war and a victory. Was it sympathy for the Spaniards that led her to destroy their free institutions in 1823? Was it sympathy for the Romans that led her to destroy their free institutions in 1849?

The selfishness of England is negative. It prevents her sacrificing her own interests for the benefit or the supposed benefit of others. The selfishness of other powerful nations, and, above all others, of France, is positive and aggressive. She sacrifices without scruple, without shame, almost without consciousness, the happiness of every other nation to her own fears or vanity or ambition.

CHAPTER II.

THE LAW OF NATIONS.*

FEW men are better qualified to write the 'History of the Law of Nations' than Mr. Wheaton. A lawyer, a historian, and a statesman, he unites practical and theoretic knowledge; and he is the author of one of the best treatises on the actual state of that law, of which in the Essay, the subject of this article, he is the historian. If we rise, therefore, from the perusal of his work with little feeling of advanced knowledge of the subject which it professes to treat—if we find that we have been reading a series of acute and interesting historical essays on the conduct of nations towards one another, in which the governing principle seems to be to do one another in peace the least possible good, and in war the utmost possible harm—we attribute our disappointment, not to the author, but to his subject. We believe that Mr. Wheaton has made as much as was to be made of his materials; and that the want of connection and precision, which is the defect of his work, arises from the impossibility of marking with accuracy the progress of a law, of which it is often difficult to ascertain the existence.

* From the Edinburgh Review of April 1843.

The general desire of mankind that the mutual conduct of nations should be governed, or at least directed, by recognised rules—that there should be some principles to be invoked by the weak, and yielded to, without humiliation, by the powerful—has produced, indeed, a literature on international jurisprudence exceeding in magnitude that which has been employed on any other branch of the Moral Sciences. Many of the writers have been remarkable for sagacity, and almost all have been men of diligence and learning, and devoted to the subject of their labours. Has the success corresponded to the effort? Are we decided as to the elements of the science, or as to the sources in which they are to be sought for, or as to the evidence sufficient to establish them?

If everything connected with the Law of Nations is vague, it may be worth while to enquire how far this indistinctness arises from the subject, and how far from the mode in which it has been treated. We hope to offer some suggestions which may assist subsequent students, or at least to give some warnings which may prevent their labours from being wasted.

For this purpose we shall endeavour to explain the objects, the limits, and the sources of the science, or rather of the sciences, to which the expression 'The Law of Nations' has been applied, and to point out the causes which have retarded their progress; and we shall conclude by some remarks on the advance which they have made during the period embraced by Mr. Wheaton's work.

The rules of human conduct to which the word 'law' is applied are thus classified by Locke:—

Of the moral rules or laws to which men generally refer, there seem to me to be three sorts, with their three different enforcements, or rewards and punishments. 1. The Divine law. 2. The Civil law. 3. The law of Opinion or Reputation. If I find an action to agree or disagree with the esteem of the country I have been bred in, and to be held by most men there worthy of praise or blame, I call the action virtuous or vicious. If I have the will of a supreme invisible law-maker for my rule, then, as I suppose the action commanded or forbidden by God, I call it good or evil, duty or sin. And if I compare it to the civil law, the rule made by the legislative power of the country, I call it lawful or unlawful, no crime or a crime.*

To express the same ideas in fewer words:—a sin is a breach of the law of God; a crime is a breach of the municipal law; an impropriety is a breach of the law of public opinion.

It is to be observed that Locke uses the word 'law' in two different senses. One, its etymological and primary sense—the other, metaphorical.

Etymologically, law is that which is laid down; primarily, it signifies a general command addressed to certain persons by a competent authority. Such a command is a law, whether it be or be not obeyed. The Divine law and the municipal law are such commands: they are perpetually violated, but still remain laws.

Metaphorically, the word 'law' is often used to express some general fact inferred from the observation of par-

* Locke on the Human Understanding, Book I. chap. xxviii.

ticular instances. In this sense we apply the word 'law' to the collective statement of many similar phenomena, and talk of the laws of electricity and the law of gravitation. But even in this sense of the word 'law,' there is always a reference to the notion of a command. What are called the laws of nature, are merely the qualities which the will of God has imposed on matter; and as this will is irresistible, and apparently unalterable, we believe the laws of nature to be permanent. The instant we discover that what we have called a law of the physical world is inconsistent with existing facts, we abandon it.

Now, what Locke terms the law of public opinion is law only in a metaphorical sense. If, from the observation of numerous individual instances, we can ascertain that certain acts are approved or disapproved by the majority of a society, we call that approbation or disapprobation a law, and say that public opinion commands or forbids the acts in question. No such command or prohibition has, in fact, been issued; but the approbation or disapprobation of society produces effects analogous to those which would have been produced by a real law imposed by a competent authority. A hundred years ago a man was laughed at if he went to a ball without a full-bottomed wig and an embroidered coat; now he would be laughed at if he wore either. The same facts may be stated by saying, that the law of public opinion required embroidered coats and full-bottomed wigs a hundred years ago, and now prohibits them.

It is obvious that, in the present state of the world, no

civil law exists between independent nations;—such nations having no common superior, no common tribunal, and no common executive, can have no legal relations in the strict sense of the word 'legal.'

But as they are capable of promoting, to some extent, the welfare of one another, and of inflicting on each other the utmost extremity of suffering, it cannot be supposed that their conduct is indifferent to the Deity. Believing, as we must, that God commands us to promote the welfare of mankind, we must believe that this command extends to national as well as to individual conduct; and consequently that national morality is as much a part of the Divine law as individual morality.

Again, it is clear that there exists among nations a public opinion. As far as that opinion is operative, it produces the uniformity of conduct which is the purpose of the civil or municipal law of a single state. The rules which it sanctions, therefore, are metaphorically termed 'laws.' Unhappily the public opinion of nations has often been miserably ill-informed, miserably ill-directed, and miserably weak; but with all its imperfections, it has been one of the principal aids to modern civilisation, and we trust that it is destined to perform services still more important and more extensive.

These, then, are the elements of which what is called 'The Law of Nations' is composed;—first, the rules of international conduct which we believe to be commanded by the Deity, and which may be called the Divine law of nations, the natural law of nations, or, more concisely,

international morality; and, secondly, the rules of conduct which are dictated or permitted by the public opinion of nations, and which may be called the human, the actual, the received, or the positive law of nations. To avoid the confusion incident to the use of one word to express rules of conduct different in their sources, and often different as to the acts which they command or permit, we shall in future express what has been called the Divine or natural law of nations by the term *international morality*, and shall confine the term *international law* to the rules of conduct, whether consistent or not with international morality, which are sanctioned by the public opinion of nations.

A passage in the work of Hobbes' 'De Cive' appears, from the constant reference to it by subsequent writers, to have had an extensive influence on the theory of international morality. In that passage Hobbes affirms, that organised nations assume the personal characters of men, and consequently that there is no difference between the moral rules which ought to be observed by nations and those which ought to be observed by individuals.* In fact, however, the analogy between nations and individuals is so imperfect, that we are seldom warranted in inferring, as to the one, conclusions which have been established as to the other.

* Lex naturalis dividi potest in naturalem hominum et civitatum, quae vulgo jus gentium appellatur. Præcepta utriusque eadem sunt — quia civitates semel institutæ induunt proprietates hominum personales. — *Imperium*, cap. xiv. sect. 4.

In the first place, the principal rules of morality among men relate to what have been called imperfect obligations, and direct what is to be done, not what is to be avoided. The negative precept not to injure, is merged, if we may use the expression, in the positive precept, to do good. But, in the existing state of human improvement, almost all the precepts of international morality are negative. A time may come when it may be useful to inculcate international benevolence; but if we confine our efforts to attainable objects, we must be satisfied for the present with endeavouring to enforce international justice. To suppose that a nation, such as nations now are, unless with a view to enrich a customer, or to strengthen an ally, or to weaken an enemy, or to raise a barrier against a rival, or for some other selfish purpose, will actively strive to increase the power or the wealth of another, is a vision in which no practical politician can indulge. Instances may, indeed, be pointed out in which a people, too weak to excite jealousy, has received disinterested assistance. But such instances are very rare. Great must be the progress of civilisation before the most sanguine international moralist can hope to do more than to diminish fraud and violence, to preserve the weak from treachery and oppression, and to prevent the strong from tearing one another to pieces.

A further difference between the morality of nations and the morality of individuals arises from the necessity imposed on the former of self-protection. An individual is protected by the law. His cottage is not endangered

by the palace which arises in its vicinity. He is not justified, therefore, in taking any measures to diminish the power of his neighbours.

But one of the best established principles of international morality declares that, under certain circumstances, it is not only the right, but the duty, of the general body of nations to prevent anyone from acquiring a preponderance of force dangerous to all the others.

Again, it is now an admitted doctrine, that between individuals a contract obtained by violence is not binding. A few years ago, a Hertfordshire farmer was decoyed into a house in Southwark, in which a dungeon had been prepared for his reception, and confined there until he signed an agreement affecting his property. The most scrupulous moralist did not blame him for proceeding, as soon as he recovered his liberty, to set aside an instrument so extorted from him. But all Europe was shocked at the immorality of the statesman who ventured to proclaim that the treaties of 1815 were not binding on France—having been wrung from her after her armies had been defeated, and her fortresses captured, and while her capital was in the possession of the enemy. Agreements entered into by an individual while under duresse are void, because it is for the welfare of society that they should be so. If they were binding, the timid would be constantly forced by threats, or by violence, into a surrender of their rights, and even into secrecy as to the oppression under which they were suffering. The notoriety of the rule that such engagements are void makes the

attempt to extort them one of the rarest of human crimes. On the other hand, the welfare of society requires that the engagements entered into by a nation under duresse should be held binding; for if they were not, wars would terminate only by the utter subjugation and ruin of the weaker party. If the allies had believed that their treaties with France were waste paper, they must have destroyed her fortresses and partitioned her territory. They could venture to leave her powerful, only because they thought that they could rely on her engagements.

And, lastly, there is a marked difference in the force of the sanctions which tend to restrain immorality among men, and those which tend to restrain it among nations. These sanctions are moral or physical. The physical sanction is the fear of injury to person or to property. The moral sanction is the fear of punishment in a future world, or the loss of honour, of reputation, or of self-esteem in this. Among men, the latter of these sanctions is by far the more effectual. The feelings of religion, of conscience, of pride, and of vanity, to which it appeals, are the most powerful of human motives. It is only the outcasts of society who are kept down by the terrors of the lash, the prison, or the scaffold. But the attempt to bind nations by mere moral sanctions, is to fetter giants with cobwebs. To the greatest of human restraints, the fear of a hereafter, they are insensible. Nations, *quâ* nations, have no existence beyond the grave. Their life in this world, indeed, is of indefinite duration; but experience does not justify the belief that national crimes,

except those crimes of which one part of a nation is guilty towards another, are always, or even usually, punished. The principal states of continental Europe — France, Russia, Austria, and Prussia, have grown from small beginnings to powerful and flourishing monarchies, by centuries of ambition, injustice, violence, and fraud. The crimes which gave Wales to England, Alsace and Franche Comté to France, and Silesia to Prussia, were rewarded by an increase of wealth, power, and security.

Again, nations are not restrained by fear of the loss of honour; for honour, in the sense in which that word is applied to individuals, does not apply to them. In that sense, honour is a negative term. It consists in the absence of certain imputations, which exclude a person tainted by them from the society of his equals. But as a nation cannot be excluded from the society of other nations, a nation cannot lose its honour, in the sense in which honour is lost by an individual. Never has the foreign policy of France been more faithless, more rapacious, or more cruel, than during the reign of Louis XIV. For half a century she habitually maintained a conduct, a single instance of which would have excluded an individual from the society of his equals. At no time was France more admired, and even courted. At no time were Frenchmen more welcome in every court, and in every private circle.

What are often called injuries to the honour of a nation, are injuries to its vanity. The qualities of which nations are most vain, are force and boldness. They

know that, so far as they are supposed to possess these qualities, they are themselves unlikely to be injured, and may injure others with impunity. What they most fear, therefore, is betraying timidity, which is both an index and a cause of weakness. But timidity, which excludes a man from society, makes a nation only the more acceptable. To call, therefore, any manifestation of cowardice, however gross, a loss of national honour, is illogical. It implies the double error of applying to a nation a liability which is peculiar to an individual, and of inferring a result which, even if that liability existed among nations, would not follow from the supposed cause.

The fear of loss of reputation is, indeed, a restraint, and among the nations that desire to be respected for justice a considerable one. But such nations are few. Strength and courage—or, as it is usually termed, spirit—not integrity and moderation, are the qualities for which most nations desire to be admired. If they can succeed in inspiring fear, they are indifferent to hatred.

Nearly the same remark applies to the fear of the loss of self-esteem. Nations care little for the possession of the qualities for which they do not desire admiration. Their self-esteem is, therefore, little wounded by the consciousness of ambition and injustice. However aggressive or faithless the foreign policy of a government may be, it is not unpopular at home until it fails. Men sometimes feel remorse for successful wickedness, nations never.

It appears, therefore, that the fear of physical evil, the

fear of injury to the persons or to the properties of the members of the community, is the principal restraint on the conduct of nations. As a protection to the weak, of course, it is trifling; and the rights of weak nations therefore, unless they acquire the advantages of strength by confederacy, are always disregarded by the strong. But when a nation perceives a probability that it will be resisted, and a possibility that it may fail, the check is powerful—more powerful, in most cases, than that imposed by the physical sanction on individuals. When an individual proposes to break the municipal law, he expects to escape detection, and he generally knows the amount of evil which, if he be detected, will follow. A nation never escapes detection, and never can estimate the amount of suffering which it may incur. The law of nations appears at first sight to resemble those of Draco. It seems to have only one punishment for every offence. But that punishment may vary from a passing inconvenience to the utmost evil that man can endure from man. It may be confined to a temporary financial and commercial derangement. It may extend to the destruction of the wealth, the institutions, the independence, the education, and even the religion of the country. The fear of these dangers generally prevents deliberate breaches of international law between great nations.

The principles and details of international morality, as distinguished from international law, are to be obtained, not by applying to nations the rules which ought to govern the conduct of individuals, but by ascertaining, as

far as we are capable of ascertaining them, what are the rules of international conduct which, on the whole, best promote the happiness of mankind. The means of this enquiry are observation and meditation—the one furnishing us with facts, the other enabling us to discover the connection of those facts as causes and effects, and to predict the results which will follow when similar causes are again put into operation. It is thus, by meditation on the experience of many centuries, that the wiser portion of the European nations have at length discovered the mischievousness of war. It is thus that they will in time discover the folly of commercial jealousy and of mutual restrictions and prohibitions. It is thus that they have discovered the expediency of abstaining from the plunder and wanton devastation of hostile property on land, and that they will in time discover the expediency of abstaining from such plunder and devastation at sea.

To ascertain what are the rules of international conduct which are sanctioned by the public opinion of nations, or, in other words, what is the existing international law, we must look to their public professions. Whatever the conduct of men may be, the principles which they avow are always those which public opinion prescribes. The principles, therefore, on which nations profess to act, the rules to which they appeal, when they think it necessary to justify their conduct, form the human or positive law of nations. It differs from the Divine law by its muta-

bility, by its silence or doubt on many subjects, its arbitrariness on others, and its positive mischief on some.

These principles are to be ascertained by collecting and balancing the statements of those who, from their position, their knowledge, and their character, may be supposed best to represent the public opinion of their contemporaries.

Among these authorities, the highest respect is due to the decisions of judges to whom questions of international law have been referred. Such are Boards of Arbitration, specially appointed to decide questions disputed between independent nations. Such are the Admiralty Judges, appointed by every maritime country to decide questions of prize and salvage. Such men speak in the presence of the whole civilised world. Their judgments give to the immediate suitors affluence or ruin. A stronger responsibility can scarcely be supposed. And they have each side of every question explained and sifted by counsel. They cannot, of course, be always free from the feelings or from the prejudice of their nation. They have sometimes been forced to submit their judgments to its commands, as was the case with respect to both the British and the French prize courts during the revolutionary war, when the municipal laws of each country obliged them to enforce rules which the rest of the civilised world disavows. There have been occasions, also, of which the French tribunals under the Directory and the Consulate afford memorable examples when their decisions have been the result of rapacity and corruption; but with all

these imperfections, they afford, perhaps, the best testimony that exists as to any matter of mere opinion.

A second depositary of international law is to be found in the Opinions of Jurists, given confidentially to their governments. Only a small portion of the questions which arise between states become public. Before one state requires redress from another, or resists a demand on itself, it generally acts as an individual would do in a similar situation. It consults its legal advisers, and is guided by their opinions as to the law of the case. Where that opinion has been adverse to the sovereign client, and has been acted on, and the state which submitted to be bound by it was more powerful than its opponent in the dispute, we may confidently assume that the law of nations, such as it was then supposed to be, was correctly laid down. The Foreign War Office of Great Britain contains a series of such documents, running back for centuries. A few of them have been published. Several drafts of the opinions given to Charles II. by Sir Leoline Jenkins were found among his papers, and form one of the appendices to his 'Life' by Wynne. A selection from the cases and opinions contained in our archives would be a valuable addition to the existing materials of international law.

A third source of that law arises from the statements of writers who have made the law of nations their especial study. It is true, that in studying the works of such writers the reader must be on his guard against a bias towards some theory, a favourite with the author or with his countrymen; and that he is often left in doubt

whether the author speaks as a moralist or as a lawyer—whether he states what he thinks that the law of nations is, or what he thinks that it ought to be.

It must be recollected, however, that on a matter of mere opinion, the statement of his own view by an eminent writer, is not only an authority but a fact; and that it is in this manner that a large portion of the existing international law has been created, and most beneficially created. Without putting the statements of even the most distinguished text-writers on a par with solemn juridical decisions, or even with the opinions given confidentially by jurists to their governments, we think that they hold the next place.

Last comes what may be called ex parte evidence. This consists of the official declarations of sovereigns, the arguments used in negotiations, the resolutions of deliberative bodies, the preambles or recitals of treaties, and generally of the statements or of the admissions of interested parties. These are to be treated as such statements or admissions generally are treated by municipal tribunals. When they are against the interest of the party who makes or admits them, they are conclusive evidence as to what that party believed to be the law. Where they are in his favour, they show merely what points could be raised, and what declarations could be hazarded—they show what questions could be submitted to public opinion, not what the decision actually was.

It appears, therefore, that international morality and international law are separated by marked distinctions.

International morality is unalterable, although it sometimes may appear to change when new circumstances, or better directed enquiries, bring to light new principles, or show the necessity of modifying those which have been previously laid down. International law is constantly changing, though with a tendency, as knowledge and civilisation extend, to coincide with international morality.

International morality is independent of authority. Its conclusions are, or ought to be, logical inferences from notorious facts; and can neither be supported nor weakened by approbation or dissent. International law is the creature of authority. It teaches only what is assented to, and the question as to its doctrines always is, not whether they are useful or mischievous, but whether they are or are not received.

The expositor of international morality hopes to benefit mankind by showing to them what international law ought to be—the expositor of international law, by showing to them what it is.

The latter object is next in importance to the former. In the present state of the world, countries of equal, or nearly equal strength, are, as we have already remarked, desirous of mutual peace. War has become a far more expensive and a far more dangerous game than it was two or even one hundred years ago. Both nations and sovereigns feel that its risks more than balance the chances of gain. But the increased publicity of matters of state, the increased interest taken in them by the people of every country, and the increased influence of the people

over the government—which tend to prevent wars of ambition or cupidity—tend to promote those of national vanity, or, as it is usually termed, of national honour. In every dispute, each party thinks that its honour would be tarnished if it were to yield when it has the law of nations on its side; and as each is judge in its own cause, each thinks that the law of nations is with it on every point that appears to be susceptible of debate.

In countries possessing a free press, the national vanity, or the national anger, is inflamed by journalists—a set of traders in excitement, who profit by the agitation which is mischievous to every other portion of the community, and whose misrepresentations nothing but the fear of immediate exposure can check. While the law to which each party appeals is in its present vague and imperfect state, and while a knowledge of its rules, as far as they may be considered as established, is so little diffused, it is impossible to prevent the frequent recurrence of international disputes, and very difficult to adjust them. But as it seldom happens that a nation intentionally violates what it believes to be that law—except, indeed, in the case of a neighbour too weak to resist—and as it is seldom that a nation thinks itself called on to resent conduct which it does not believe to be a breach of that law, it follows that if the rules of international law were full, clear, and notorious, national disputes would be rare and brief. If it be important that municipal law should be clear and well known, in order to prevent the inconvenience of private litigation, how much more important

is it that the rules of international law should be ascertained and studied, in order to prevent the worst of human evils—war between civilised nations!

Having thus sketched the objects, the limits, and the sources of the two sciences, international morality and international law, which are equally comprehended under the expression 'The Law of Nations,' we proceed to the next branch of our subject—the causes which have retarded their progress.

Among the principal obstacles to the progress of the moral sciences have been verbal ambiguities. There is, perhaps, none which they have more impeded than the law of nations. Grotius, the great founder of the sciences of international morality and international law, applied to both of them the term *Jus*. Now, the word *jus* has four separate principal meanings.

First. It denotes justice—the conduct which, in all questions between ourselves and others, an impartial third person would approve as right. Thus, *jus* is defined in the Digest as *ars æqui et boni*. And, again, *Id quod semper æquum et bonum est, jus dicitur.** In this sense it is used by Grotius, when he says, that what is properly termed *jus* consists in abstinence from what belongs to others, restitution of any improper acquisition, performances of promises, reparation of injuries, and

* Digest, lib. i. tit. 2, § 1–11.

punishment of wrongdoers.* In this sense it is opposed to *injuria*; and nearly agrees with the primary sense of the English word *right*.

A second meaning of the term *jus* corresponds with the English term *a right*; that is, a legal title or power. In this sense it is used in the well-known Roman distinction of rights—into rights of persons or rights of things; the first, *jura personarum*, comprehending the powers which men may legally exercise over other persons, such as the *jus patriæ potestatis*, the right of a father over his offspring, *jus mariti*, the right of a husband over his wife; the second, *jura rerum*, comprehending the powers which men may exercise over property. And as these powers are most obvious when they are exercised over the property of another, the words *jus* and *right* are often employed in the Roman and the English law to indicate a power of limited use, as distinguished from perfect ownership. Thus, *jus viæ* is a right of way over another man's land; *jus usufructus*, a temporary and transferable right of enjoyment; *jus usus*, a temporary and intransferable right of enjoyment. In this sense of the word, Justinian ranks among incorporeal things, *ea quæ in jure consistunt*; that is to say, rights as distinguished from possessions†

Thirdly. *Jus* sometimes signifies Law. In this sense it is opposed to violence; as in the fine passage in Cicero's defence of Sextius, in which, after contrasting savage and civilised life, he traces the difference to the prevalence of

* Prolegomena, 8. † Instit. lib. ii. tit. 2.

jus or *vis*. One or the other must govern. '*Vim volumus extingui? Jus valeat necesse est—id est judicia, quibus omne jus continetur. Judicia displicent? vis dominetur necesse est.*'* In this sense of the word *jus*, the burning of heretics was *jus* in Spain; the use of torture was *jus* in France; the imprisonment for life of a debtor was *jus* in England. They were *jura*, not because they were *right*, but because they were *law*; that is to say, because they were rules of conduct, sanctioned by an authority having the power and the will to enforce them. In this sense, *jus* is sometimes opposed to *æquitas*. Thus, in the celebrated question between Antonius and Crassus, whether a purchaser could object to a defect of title of which he had notice—'*Jus*,' says Cicero, '*Crassus urgebat, æquitatem Antonius.*' †

In a fourth meaning, also corresponding with one of the meanings of the English word Law, *jus* signifies a body of legal institutions. Thus Justinian terms the legal institutions which are common to all nations—such as marriage, and the support of children by their parents—*jus gentium*; the peculiar institutions of Athens, *jus Atheniensium*; the peculiar institutions of Rome, *jus Romanum*, or *jus Quiritium*.‡ And Papinian subdivides *jus Romanum* into *jus civile*, consisting of laws formally enacted, and *jus Prætorium*, rules by which the Prætor supplied the defects, or moderated the severity, of what may be called the statute law of Rome.§ Even a small

* Pro Publio Sextio, 42.

† De Off. 3, 16.

‡ Instit. tit. 2.

§ Digest, lib. i. § 6.

branch of law is termed *jus*. Thus the rules of adoption are called by Cicero *jus adoptionis*.* The rules observed by the Augurs, *jus Augurum*.

The adjective *justum* follows most of the significations of the substantive from which it is derived. Thus *justum* is sometimes that which is right; sometimes that which is legal—as *justum matrimonium*, a legal marriage, and sometimes a person or a thing entitled to certain privileges. Thus Cicero says, that he obtained over the Amanienses *justam victoriam*; that is to say, a victory which entitled him to be saluted Imperator.† He holds that Regulus was bound to perform his promise to the Carthaginians, because it was made *justo et legitimo hosti*;‡ not meaning that the cause of the Carthaginians was just, but that they were engaged in lawful hostility, and therefore entitled to rights which are denied to pirates and robbers. And, in a nearly similar sense, that *justum bellum* is a war that has been publicly declared.§

It is unfortunate that the successors of Grotius on the continent, whether they wrote in German, in French, or in Italian—and these, together with Latin and English, are almost the only languages in which the Law of Nations has been treated—found in each language a single word comprehending all the different significations of *jus*. In French, *droit* is right as opposed to wrong. *La justice*, we are told, *est la conformité des actions avec*

* Pro Domo, 13.
† Ad Fam. Epis. x.
‡ De Off. 3, 29.
§ De Off. 1.

le droit. Again, *droit* is a legal claim. *Les droits Seigneuriaux* are feudal rights; the *droit de visite* is the right of search. *Droit de commission* is brokerage. Thirdly, *droit* is law. *Droit* and *fait* are opposed, like *jus* and *vis.* A *docteur en droit* is a doctor of laws. And, finally, *droit,* like *jus,* signifies a body of law. The canon law is *droit canon*; the civil law, *droit civil*; the common law, *droit coutumier.*

We will not fatigue our readers with enumerations of the parallel significations of *recht* and of *diritto.* It is enough to state that each of them is used in the four different senses of *jus*—that is, to signify, 1st, what is right; 2nd, a right; 3rd, law; and 4th, a body of law.

It is to be remarked that *jus, droit, recht, diritto,* in the primary sense of each, imply the idea of moral approbation, but do not imply the ideas of legal claim or legal duty. And that in all the other senses, they imply the ideas of legal claim and of legal duty, but not that of moral approbation. What is morally right cannot be unjust, but may often be unsupported by law. A right, a body of law, or law in the abstract, may be unjust; but to call either of them illegal would be a contradiction in terms.

On the other hand, few of the ideas denoted or suggested by these words mutually exclude one another. A plaintiff may be said to proceed *jure,* because he has justice on his side; because what he claims is a right, not a possession; because he proceeds by law, not by force, and because he invokes a given *jus* or body of law.

It is obvious that a writer who has to use a term, the meanings of which are numerous, dissimilar, and yet not opposed, must be in constant danger of sliding from one meaning to another; and of drawing inferences which appear to be legitimate only because the same word is used differently in the premises and in the conclusion. He is in constant danger of supposing that a rule is *jus*, *droit*, *recht*, or *diritto*, in the sense of law, because it is *jus*, *droit*, *recht*, or *diritto*, in the sense of justice; or that it is *jus*, *droit*, *recht*, or *diritto*, in the sense of justice, because it is *jus*, *droit*, *recht*, or *diritto*, in the sense of law. An English writer, possessing distinct words to express justice and law, is likely to under-estimate the danger of confounding them; yet in every other language they have been confounded, and whole treatises have been bottomed on their confusion.

The example was given by Grotius. His great work was published during the Thirty Years' War, perhaps the most calamitous period in modern history. The sovereigns of the continent, far more numerous than they are now, were little influenced by public opinion; and indeed, except on theological subjects, little public opinion existed. The great business of all the more eminent and more energetic portion of mankind was war. Princes sought it to gratify ambition or vanity, nobles as the only road to advancement, and the lower classes as the readiest, often indeed the only, employment that was left to them. The object of all parties seemed to be, not to conclude, but to prolong it. To obtain quarters for the ensuing winter, or

an opportunity of plundering some province which had not been recently ravaged, was a sufficient object for a campaign, or even for a war. As the art of raising a public revenue was almost unknown, armies supported themselves, whether in a hostile, a friendly, or a neutral country, by requisitions, ransoms, and robbery. Sovereigns trembled before their own generals, and generals before their own troops. In some cases the seed-corn and the labouring cattle and stock were consumed, the towns and villages were burned, famine was followed by pestilence, and what had been a rich and populous district fell back into a wilderness. To use a picturesque expression of Schiller, '*die Menschen verwilderten mit den Ländern*,'* men became savage like their countries.

I found (says Grotius) an almost universal opinion, that in the conduct of a king or a state, nothing is unjust that is expedient —that might is right—and that to unite government and justice is impossible. I saw throughout the Christian world a license of fighting, of which barbarians would have been ashamed. I saw men rush into war for trifling causes, or for no cause at all; and I found war treated as a sanction for every crime which the maddest wickedness could perpetrate.†

It was under these circumstances, and with these feelings, that Grotius undertook to write *de Jure Belli et Pacis*. He believed, in opposition, as we have seen, to the prevailing doctrine, that there existed a *jus* between nations; and believed that an exposition of this *jus*, as it exists in war and in peace, might check the progress of

* Thirty Years' War, book v. † Proleg. 3, 28.

disorders which threatened to destroy the civilisation of Europe. Grotius was a man of vast learning and industry, and of very considerable acuteness; but the fame which he has acquired, and the good which he has effected, are owing much more, perhaps, to his moral than to his intellectual qualities. Candour, conscientiousness, a sense of duty often amounting to scrupulosity, indignation against fraud and oppression, and an unwearied diligence in the attempt to hold them up to public detestation, are the qualities which now interest us in his works, and must have been those which enabled them to interest his contemporaries. But he was much better fitted to persuade than to instruct; to improve the feelings of his readers than their judgment. His defects as a reasoner contrast painfully with his merits as a moralist. His conclusions are often independent of his premises, and the premises themselves are often a mass of words, out of which definite ideas cannot be readily extracted.

Such is his statement of the grounds on which he rests the existence of a *jus hominum naturale*.

As man can treat similar things in a similar manner, and as he eminently desires society, it must be believed that he has the faculty of understanding and acting according to general principles; and that this faculty agrees with the things which suit the human nature. This preservation of society agreeing with the human intellect, is the source of what is properly called justice (*jus*), which consists in the abstaining from what belongs to another, or restoring it if in our possession, performance of promises, reparation of injury, and the infliction of deserved punishment.' *

* Homini cum circa similia similiter agere norit, cum societatis appetitu

Having established—we will not say how, for we do not pretend to understand the passage which we have quoted—the existence of natural principles of justice between man and man, he infers their existence between nation and nation, and gives to them the name of *jus gentium naturale.*

He remarks that, in addition to the *jus hominum naturale,* there exists in every community a body of rules, which the community, or the ruling body of the community, has voluntarily imposed on its members. Such a body of rules he terms *jus civile voluntarium*; and finding that the conduct of nations towards one another is regulated by certain usages which cannot be traced to the principles of justice, he infers that there exists also among nations a *jus voluntarium.* He divides *jus voluntarium,* therefore, into *jus civile voluntarium* and *jus gentium voluntarium.*

The ambiguity of the word *jus* now shows itself. When Grotius speaks of the *jus gentium naturale,* he uses the word *jus* to signify justice. When he speaks of the *jus civile voluntarium,* he uses the word *jus* to signify law. But when he speaks of the *jus gentium voluntarium,* he means by *jus* neither justice nor even law, in the primary

excellente, inesse etiam facultatem sciendi agendique secundum generalia præcepta par est intelligi, cui quæ conveniunt sunt humanæ naturæ congruentia. Hæc societatis custodia humano intellectui conveniens fons est ejus juris quod proprie tali nomine appellatur, quo pertinent alieni abstinentia, et si quid alieni habeamus restitutio, promissorum implendorum obligatio, damni culpâ dati reparatio, et pœnæ inter homines meritum.—*Prolog.* 7, 8.

sense of the word law. He uses that word to express a set of rules laid down by public opinion, and, as we have already remarked, called *jus*, or law, only by metaphor.

Grotius, indeed, cannot be accused of having first introduced this metaphorical use of the word *jus*; since even by classical writers *jus gentium* is sometimes, though very rarely, opposed to *æquum bonumque*, and when so used can signify nothing but the usage of nations. Thus, Sallust says that the attempt to try Bomilcar for a crime committed by him while ambassador, was *magis ex æquo bonoque quam ex jure gentium.** But though Grotius did not invent it, he first employed it systematically, and set the example of using the same word to signify what is morally right, what is legal, and what is customary.

It is difficult to avoid believing, that if he had used distinct words to express these distinct ideas, he would have modified many of his conclusions. Thus his doctrine, that a monarch may be the proprietor of his kingdom and of his subjects—that he may have a right (*jus*) to subdivide his territories, and to sell, exchange, or bequeath them, wholly or in part—is true, if *jus* is used merely to express a legal right, but false if it is used, as it is in this instance by Grotius, to denote a moral right. Again, when he holds that a foreign nation has a right to interfere in favour of the oppressed subjects of an independent sovereign, and to redress their injuries even by war, but that subjects themselves have no right to resist the tyranny

* Bell. Jug. cap. 39.

of their ruler, his distinction is founded on the circumstance that a subject, though he may have *jus* in the sense of justice on his side, cannot resist his sovereign except by a breach of *jus* in the sense of law. He compares him, therefore, to a minor, who cannot bring an action against his guardian, but whose cause may be lawfully taken up by a stranger not subject to such a personal disqualification.

A clear perception of the inconvenience of the use of the word *jus* by Grotius, and that the *jus gentium voluntarium* has no legal efficacy, seems to have led Puffendorf to the opinion that it has no efficacy whatever. He considers the *jura belli* as mere technical rules, which princes and generals, whose great amusement was war framed for their own convenience, and to prevent that noble game from being absolutely intolerable to their subjects. The *jura pacis* he considers as depending on general morality, or as mere forms of good breeding.* If his views had been universally admitted, and he had many followers, they would have tended to perpetuate in Europe the lawlessness from which Grotius had endeavoured to rescue her.

It was long before any work on the mutual relations of nations appeared in the English language; and, in the meantime, the word *jus* had been firmly established in Latin as the general name for such relations, subject to the existing controversy, whether they did or did not

* Lib. ii. cap. 3, sec. 23.

comprehend a *jus voluntarium*. The English writers, if they thought fit, as they did, to translate *jus* by a single word, had to choose between right and law—right answering to the two first senses of *jus*, and of its equivalents in French, German, and Italian, and law to the third and fourth senses. They selected law, an ambiguous term, though less so than *jus*. The consequence has been, that the relations of nations have been considered by some English writers as more definite than they really are. The expression 'Law of Nations' seems to imply legal relations. It does not imply them, because the word legal is never used metaphorically; and it is only by metaphor that the rules of conduct professed by nations are termed laws. On the other hand some writers, struck by the impropriety of calling such rules laws, have adhered to the school of Puffendorf, and denied that there is any law between nations except the moral law imposed by God.

A second obstacle to the progress both of international morality and of international law, has been the uncertainty of the sources from whence they have been derived.

The principle that all rules of public and private morality have for their object the promotion of the happiness of mankind, and are right or wrong so far as they effect or obstruct that object, was not recognised in the times of Grotius. In the absence of this simple and intelligible principle, Grotius defines *jus naturale* to be 'the dictate of right reason, indicating a moral impropriety or a moral necessity to be inherent in every action,

according to its agreement or disagreement with rational and social nature.' * The vagueness of this definition is perhaps the explanation of the mass of citation in which what is original in Grotius lies buried. He had no facts by which to test the agreement or disagreement with rational and social nature, on which he rested the morality of actions; and was driven, therefore, to testimony as the only medium of proof.

The principle of utility, vaguely indicated by Leibnitz,† but clearly expressed and adopted by Cumberland,‡ and admitted by almost all subsequent writers as the test of international morality, has dispelled much of the mist with which the foundations of that science were obscured by Grotius, and by his immediate successors. But it was long before the real sources of international law, as distinguished from international morality, were ascertained and recognised, if indeed they can be said to be recognised even now.

Grotius believed that what he denominated *jus gentium voluntarium*—that is to say, the rules of international conduct which are generally admitted, but cannot be traced to any supposed agreement or disagreement with rational and social nature—must have arisen from some general compact between the civilised portions of man-

* Jus naturale est dictatum rectæ rationis indicans actui alicui, ex ejus convenientiâ aut disconvenientiâ cum ipsâ naturâ rationali et sociali, inesse moralem turpitudinem, aut necessitatem moralem.—Lib. i. cap. 1, sec. 10.

† De actorum publicorum usu.—S. 13.

‡ Lex naturæ est propositio naturaliter cognita, actiones indicans effectrices communis boni.—Cap. 5, sec. 1.

kind. He looked for the evidence as to the existence and the details of these rules, and as to this original compact, in the opinions of writers, and in the examples furnished by history, and selected them from the earlier periods of Greece and Rome, as the best times of the best nations.*

Now, in the first place, the theory of an original compact between nations is utterly without foundation. Secondly, international law, so far as it differs from international morality, is essentially mutable. To infer the principles on which nations now profess to regulate their conduct, from those which were professed by the contemporaries of Themistocles or of Scipio, would be puerile; even if there had existed in those times an established international law. And thirdly, except the observance of treaties, and the privileges of public messengers—rules rather of international morality than of international law, and acknowledged even by savage nations—it can scarcely be said that either Greece or Rome recognised any international law whatever. There were, indeed, in Greece, certain usages connected with the prevailing superstition, such as the rights of sepulture, of sanctuary, and of liberty to frequent public games; but they were rather religious than political customs. The *jus belli* of the Romans prescribed certain forms of declaring war, and forbad those who were not legally soldiers from taking part in it; but it was a mere domestic institution to prevent individuals from engaging the state in

* Proleg. 46.

hostilities, or interrupting the plan of a campaign by unauthorised expeditions.

With the exception, which we have made, of the obligations of treaties, and the privileges of public messengers, neither the Greeks nor the Romans admitted any international rights or international duties. They attacked all whom they hoped to conquer—they wasted the territory and destroyed the habitations of those whom they thought it expedient to declare enemies. Sometimes they put to death, indiscriminately, the whole of a hostile population—sometimes they sold them all, indiscriminately, into slavery—and sometimes they made slaves only of the women and children, and massacred the men; or, according to the Roman practice, reserved them to perish in the amphitheatre, in contests with one another, or with beasts. The international law of Greece and Rome was the international law of New Zealand, with the single exception of cannibalism. The classical quotations which form the principal portion of the pages of Grotius are amusing, and even interesting; but there their merit ceases. As a means of ascertaining what the law of nations ought to be, they are useless, for that is not a question to be decided by authority; as a means of judging what it was when Grotius wrote, they are worse than useless, for they tend only to mislead. Defective and ill-directed as national feeling and national conduct then were, they were as superior to the feelings and conduct which prevailed in what Grotius ventured to term the best times of the best nations, as the feelings and actions

of imperfectly civilised Christians might be expected to be to those of imperfectly civilised heathens.

Gradually, however, a school of writers arose, who perceived that rules of conduct, which derive their force from public opinion, must vary with all the changes of that opinion; and that it is absurd to infer the opinion of one age from the acts which were done, or from the sentiments which were professed, in another.

But the meritorious men who, from time to time, endeavoured to ascertain what was the public opinion of Europe as to the conduct which nations might require from one another, have, in general, shown more diligence in the collection of materials than judgment in their estimation. The authorities on which they have principally relied have been treaties. Now, treaties are often of great value, as showing the opinion of nations as to what international law ought to be. Thus, the clauses in the treaty between Prussia and the United States of America, in 1785, which, in the event of a future war between the two powers, provided against the confiscation of the property, or the molestation of the persons of private individuals, show the opinion of those nations as to what ought to be the international law of war. Again, stipulations which prohibit an act under certain circumstances, tacitly admit its lawfulness under any but the excepted cases. Thus, the convention of 1801 between England and Russia, which provided that neutral merchant vessels, when under convoy, should not be searched for enemy's property by any but national cruisers, and then

only under certain restrictions, recognised the general law, that when not under convoy they might be searched for enemy's property by privateers.

Again, stipulations which require an act to be done in certain cases, admit that it cannot be demanded in any other cases. Thus, the treaties by which many nations have agreed that, under certain circumstances, and during certain periods, they will mutually deliver up persons accused of certain crimes, are conclusive evidence that, in the opinion of those nations, there is no general international law requiring all nations to deliver up all criminals.

But when a treaty is regarded, as has often been the case, not merely as recognising the general law by its admissions, but as creating a new general law by its express enactments—or as binding the contracting nations, not only as between one another, but to other nations not parties to the treaty—such inferences are unwarranted, and their frequency is one of the many proofs of the illogical manner in which international law has generally been treated.

Another fertile source from which Jurists have derived the doctrines of international law, has been the opinions of their predecessors. During the greater part of the last century, a quotation was an argument, with little reference to the real value of the testimony adduced. We have already remarked the abuse of citation by Grotius; and though subsequent writers have avoided the error of looking for the opinions of modern Europe in those of Greece

and Rome, they have copied from one another even more servilely than he did from his classical authorities. A proposition announced undoubtingly in the text, will often be found, on referring to the note, to rest on a mere chain of quotation, where every link depends on the one which preceded it, and the whole hangs on Lactantius or St. Augustine.

Where their premises have not been drawn from treaties or from authority, they have generally been taken from example, or, as it is usually termed, usage. But if the rules of international law were to be taken from usage, much that is now considered to be a part of that law must be rejected; and principles would be introduced far less favourable to the happiness of mankind than those which we believe now to prevail. The professions of the worst men and of the worst nations are generally better than the practice of the best.

Thus it is an admitted principle in international law that all nations are to be treated as equal—that all are entitled to similar rights, and to a similar independence, whatever be their power. But not a shadow of this equality is to be found in practice. In practice the treatment which nations receive depends on their force: the strong dictate; the weak submit, and those whose power is nearly balanced negotiate. But as the principle, that might gives right, though always acted on, is never avowed, we venture to exclude it from the Law of Nations. And finding the opposite principle constantly professed, even by those whose conduct is a perpetual violation of

it, we hold it to be established in theory, and hope that happier times will see it established in practice.

In fact, if the opinions of nations were to be inferred from their actual conduct, almost every crime against which international law is supposed to be directed would be sanctioned. What are the rights of neutrals, if the conduct of all the belligerent powers during the revolutionary wars (and what power was not belligerent during a portion of that unhappy period?) is to be their measure? What reliance is to be placed on treaties, if their obligation is to be estimated by the respect which then was paid to them? That the business of nations is to plunder or to subjugate enemies, neutrals, or allies, and that these ends are to be effected by fraud and treachery if possible, and where these fail, by violence—that the true objects of every statesman are to increase the strength of his own country, and to weaken his neighbour's—and that all means are justifiable by which either of those objects can be effected,—such are the principles of international law, which are to be deduced from the examples afforded by Continental Europe from 1792 to 1814. That these examples shook international law to its foundations must be admitted; but they did this injury, not by creating of themselves new rules, but by corrupting public opinion. In one nation on the continent, and, unfortunately for mankind, still perhaps the most powerful one, they seem to have utterly perverted it; and we fear that there is none in which the improvement in public morality has kept pace with the general advance in civilisation. The

conduct of Britain during that long struggle, bad as it was in many respects, was far less censurable than that of any of her powerful neighbours. She was sometimes insolent, illegal, and unjust. She trampled under foot law and morality; but it was for the purpose of defence, not of attack: it was in order to defend herself from aggression, or perhaps from destruction, not in order to rob or to conquer. Her crimes were those of violence, not of treachery. She alone, among the nations, kept faith. And we believe that public opinion on international subjects is in a far sounder state in Britain than in any other of the great nations of Europe—but even in Britain it is lamentably imperfect.

We now proceed to the third branch of our subject—the progress of the Law of Nations from the peace of Westphalia to the congress of Vienna.

The most convenient mode of stating Mr. Wheaton's views, will be to extract the recapitulation which closes his work:—

On a general view of the progress of the Law of Nations since the peace of Westphalia, it appears to me:

That the result has been, rather that the principles laid down by Grotius, and by the jurists of his school, have been more clearly defined and recognised, than that new laws have been established to regulate international relations.

That these relations have been maintained by the general adoption of permanent missions, and the recognition of diplomatic privileges.

That although the right of intervention to preserve the balance of power, or to prevent the dangers to which one country may be exposed by the domestic events within another, has been frequently

assumed, yet no general rules have been discovered by which the occasions which call it forth, or the extent to which it may be carried, can be laid down; and that it remains, therefore, an undefined and undefinable exception to the mutual independence of nations.

That the exclusive dominion over particular seas has been abandoned as a barbarous pretension—the general right to use the ocean for the purpose of navigation, commerce, and fishery, has been conceded, and the right of search limited to periods of war.

That the universal right to use the Scheldt, the Rhine, and the other great European rivers, has been established as a principle of international law.

That the colonial monopoly has nearly ceased, and with it the question as to the right of neutrals to enjoy in war a commerce prohibited in peace.

That the slave trade is generally reprobated as a stain on human nature, though not universally abolished in fact, or even by law.

That the laws of war have been improved, and among the more civilised nations the usages of war have been sensibly softened; and that, although there is still some uncertainty as to the rights of neutral navigation, a conventional law has been created by treaty, which shows a manifest advance towards securing the commerce of nations which remain at peace, from interruption by those which are at war.

That the sphere within which the Law of Nations operates has been extended by the unqualified accession of the states of the western hemisphere, by the tendency of the Mahomedan powers to adopt the public law of Christendom, and by the general feeling, even among less civilised nations, that there are rights which they may exact from others, and, therefore, duties which they may be required to fulfil.

That the law of nations as a science (*in our nomenclature, international morality*) has advanced with the advance of philosophical knowledge, and the improvement in philosophical language with our extended knowledge of the past and of the present con-

dition of mankind, and with the variety and importance of the occasions for its application.

And, lastly, that the Law of Nations, as a system of positive rules regulating the intercourse of nations (*in our nomenclature, international law*) has improved with the general improvement of civilisation, of which it is one of the most valuable products.*

Of the subjects of discussion thus suggested by Mr. Wheaton, our bounds of course oblige us to leave many unnoticed, and to dwell more briefly than the importance of the questions, or the authority of the writer, would require on the few which we have room to consider.

We must begin by expressing a doubt as to the accuracy of Mr. Wheaton's first position, 'That the progress of the Law of Nations, since the peace of Westphalia, consists rather in the recognition of the principles laid down by Grotius and his school, than in the introduction of new international laws.' And we will support that doubt by comparing the doctrines of Grotius on some of the most important questions of international law with those now acknowledged by Europe. We will first take the great question of the right of intervention.

The opinion (says Grotius) is not to be tolerated, that the Law of Nations permits war for the purpose of preventing one nation from acquiring a dangerous preponderance of power over others. Where war, indeed, is just on other grounds, such a motive may decide as to its prudence; but that the fear of suffering injury should give a right to inflict it, is against all rules of equity. Such is the condition of human life, that perfect safety is not to be attained. Against dangers that are merely probable, we must take innocent precautions, and then rely on Divine Providence, without having recourse to force.' †

* P. 444.

† Lib. ii. cap. 1, sec. 17.

And in the same spirit he maintains that even warlike preparation on the part of a neighbour are to be met, not by obliging him to desist, but by equivalent preparations on our own side.*

If this were international law, what would become of the right of intervention to preserve the balance of power? or of the right of preventing aggression by preventing the accumulation of the means of attack?

Again, he denies to a nation the right of preventing foreigners from settling in its uncultivated territory. He holds, indeed, that such a territory may be seized by occupants, provided they acknowledge the authority of the sovereign.† If no nation could legally prevent the intrusion of foreigners into its unoccupied territories, how could the maritime powers of Europe have created or defended their vast colonial dependencies? how could Spain, Portugal, and England, have appropriated and divided America? and how could Russia have extended herself from the Baltic to the Northern Pacific? With the single exception of British India, the great empires which European nations have founded in the other quarters of the globe have been formed by first assuming sovereignty over large territories unoccupied, or occupied only by tribes held unentitled to the rights of international law, and then gradually peopling them with their own subjects. Without doubt, such a course of proceeding is open to abuse, and in fact has been grossly abused; but it

* Lib. ii. cap. 22, sec. 5. † Lib. ii. cap. 2, sec. 18.

is equally certain that it is sanctioned by the Law of Nations, and we believe that it ought to be so sanctioned.

But while Grotius denies the lawfulness of hostility in cases in which it is now admitted, he affirms it in cases in which it is now abandoned. Thus he affirms that it is a just cause of war, if a nation, engaged in a just war with a third party, is denied by a neutral the liberty of military transit, whether the motive for denial be the fear of injury from the passing army, or from the other belligerent. Fear, he repeats, does not justify a denial of right, which he considers the liberty of the transit to be, and still less does the fear that a third party may take unwarranted offence.* He even maintains that a belligerent whose cause is just may lawfully seize a neutral territory, if he foresees that it may otherwise be occupied by the enemy.† Such was the pretence on which we seized Copenhagen in 1807; but who will now venture to defend that occupation?

Perhaps there is no point on which the Law of Nations, as laid down by Grotius, differs more from that which is now recognised, than as to the treatment of criminal refugees. Grotius maintains that a nation is strictly bound either to punish or give them up; but he admits that the injured nation seldom exacts the performance of

* Lib. ii. cap. 2, sec. 13. Grotius seems to have been seduced into this strange doctrine by the example which he quotes from Numbers, Chap. XXI., of the war waged by the Israelites against the Amorites on the denial of liberty of passage, and the approbation of that war by St. Augustine.

† Lib. ii. cap. 2, sec. 10.

this duty, except in the cases of persons accused of political offences, or of atrocious crimes.*

It is now admitted, first, that no nation can lawfully punish or even try offences committed by foreigners in a foreign territory. Secondly, that the extradition of criminals for trial or punishment in the country where the crime was committed, is a matter of treaty, and can be required only where such a treaty exists, and then only to the extent and under the circumstances defined by the treaty. And thirdly, that political offences are precisely those to which no such treaty ought to extend. The most powerful, and the least scrupulous European nation, would scarcely venture to incur the odium of requiring the weakest of its neighbours to surrender a political offender. France does not exact this from Geneva.

We have not nearly exhausted the points of difference between the opinions supported by Grotius, and those which now constitute international law; but those which we have mentioned are sufficiently numerous and sufficiently important to justify us in holding that the greater part of the existing international law is of a more recent date than the times of Grotius, or of his immediate followers, who may be termed his school.

We rather regret that Mr. Wheaton has included in one paragraph, and apparently considered as subjected to the same principles, the right of intervention created by

* Lib. ii. cap. 21, secs. 3, 4, 5.

danger arising from the undue preponderance, either actual or possible, of a single power, and that created by inconvenience or danger arising from events occurring in the interior of a foreign country. Each of these rights is founded on a supposed danger or inconvenience—each of them sanctions hostilities against a nation willing to remain at peace. But there the resemblance ends. In the degree of precision with which they are capable of being defined and regulated—in the frequency of the occasions for their exercise—in the benefit arising from their legitimate employment—in the evils likely to follow from their abuse, and in the amount of the temptations to such abuse—the difference is striking.

The occasions on which the right of forcible intervention, to prevent the undue augmentation of a single power, has been exercised, are comparatively rare. The internal development of the resources of a country has never been considered a pretext for such an intervention, nor has its acquisition of colonies or dependencies at a distance from Europe. It seems to be felt, with respect to the latter, that distant colonies and dependencies generally weaken, and always render more vulnerable, the metropolitan state. And with respect to the former, although the increase of the wealth and population of a country is the most effectual means by which its power can be augmented, such an augmentation is too gradual to excite alarm. To which it must be added, that the injustice and mischief of admitting that nations have a right to use force for the express purpose of retarding the civilisation and

diminishing the prosperity of their inoffensive neighbours, are too revolting to allow such a right to be inserted even in the lax code of international law. Interferences, therefore, to preserve the balance of power, have been confined to attempts to prevent a sovereign, already powerful, from incorporating conquered provinces into his territory, or increasing his dominions by marriage or inheritance, or exercising a dictatorial influence over the councils of an independent state.

Four principal occasions have occurred, since the peace of Westphalia, in which interferences for the preservation of the balance of power have led to actual war. In three of them the power restrained, or attempted to be restrained, was France—in one it was Russia.

The first was a consequence of the power acquired by Louis XIV. in the earlier part of his reign—a power which, during the interval between the peace of Nimeguen in 1678, and the commencement of hostilities in 1688, threatened to render Europe subservient to France. That danger was averted by the league of Augsburg, the war of 1688, and the peace of Ryswick in 1697. The material power of France was diminished, and her moral preponderance destroyed; and the beginning was made of the intimate relations between England and the Continent, which have since produced so much good and so much evil.

The second produced the war of the 'Spanish Succession.' Charles II. of Spain, without descendants or very near relatives, was supposed to have—and if, in the

agglomeration of states which formed his vast empire, there was any common law as to the transmission of the crown, perhaps had—the right to bequeath his territories. In the event of his intestacy there were two claimants—the House of Bourbon and that of Hapsburg—each descended from a Spanish princess, but each estopped by express renunciation. It was known that the affections of Charles, and, what was more important, those of his wife, leant strongly towards an Austrian candidate. Under such circumstances, France proposed to England, Holland, and Austria, a treaty of partition. The will of Charles, whatever it might be, was to be set aside. Lorraine and Bar, a portion of Savoy and of the north of Spain, Sicily and Naples, and the Spanish possessions in Tuscany, were to be given to France; Milan to the Duke of Lorraine; and to an Austrian grand duke the rest of Spain, the Spanish Netherlands, Spanish America, and Sardinia.

The motive of France was obvious. If the will of Charles was in her favour, she was prepared, as the event showed, to disregard the treaty, and seize the whole inheritance; if it was against her, she could enforce the treaty, and have the assistance of England and Holland in securing a large portion of it. Austria refused her concurrence, but England and Holland acceded.

It must be admitted that this transaction carried to its utmost extent the right of intervention to maintain the balance of power. Neither the interests nor the wishes of the nations who were to be distributed among the different sovereigns were consulted. Their earnest desire was to

remain united; and Charles, thinking that the validity of his will would depend on the power of his legatee—and that France was more powerful than Austria, and, estimating at its real value the obligation imposed on France by the treaty—bequeathed the whole of his dominions to the House of Bourbon. Louis, with the contempt of public faith, of which his country stands generally accused, accepted the perilous gift. The war by which England and Holland endeavoured to prevent this enormous accession to the power of France, was successful in one of its most important objects—the exclusion of France from the Netherlands; but the success was bought by twelve years of exhausting war, and by burthens from which Holland has never recovered, and which even now press upon England.

For many years after the peace of Utrecht, there was no single sovereign in Europe whose power was generally formidable. The importance acquired by Prussia shows the weakness of all her neighbours. With a poor disjointed territory, and a population not equal to that which now belongs to Bavaria, she was able to raise herself from an electorate to a kingdom; to destroy the unity of the Empire, and what remained of force to the Imperial crown; to seize on portions of Austria and of Poland, and to be for a time the most influential state in Europe. Much, without doubt, depended on the talents of her great Elector and of her great King; but if Frederick II. had had to deal with states resembling in power the existing great monarchies of Europe, no personal qualities

would have enabled him to act as a superior or even as an equal.

The wars that intervened between the peace of Utrecht in 1712, and the peace of Paris in 1784, arose from ambition, from vanity, from commercial or colonial disputes, or from the family interests of sovereign houses; not from any general apprehension of danger from the preponderance of a single state.

Of course we do not mean to say that the desire to keep down the power of a rival was not often one of the motives to war; but it was not the principal motive; and, above all, it was not the motive assigned. To borrow an expression from Grotius, it was a '*causa belli suasoria non justifica.*' In 1778, for instance, when Prussia and Saxony made war on Austria, in order to force her to relinquish Bavaria, one motive, without doubt, was fear of danger from the increase of power which Austria would have obtained from so large an accession of territory and population. If this fear, however, had been the only motive—if Austria, for instance, had had a just claim, without any breach of international law, to the inheritance of Bavaria—we do not believe that her claim would have been opposed. But the seizure of Bavaria by Austria was an unvarnished robbery, it was an open violation of treaties to which Prussia and Saxony were parties—these were the circumstances which gave a right to interfere, and by which, therefore, they defended their interference.*

* Declaration of the King of Prussia, July 7, 1778. Annual Register, vol. xxx. p. 316.

Towards the end, however, of the last century, the power of Russia began to excite serious alarm, principally, of course, among the states which had the misfortune to be nearest to her. Towards Sweden, towards Poland, towards Turkey—in fact, on all her frontiers—she was in a course of extension, which is scarcely arrested even now. There was no period at which she inspired so much dread as during the five years immediately preceding the wars excited by the French revolution. It is true that at that time she had not perhaps more than half of her present offensive force; but, as compared with the present, it was a period of general weakness. Great as the additions are which the last half century has made to the power of Russia, they are probably less than those which it has made to the power of England and of Prussia. And, what is of more importance, the intrigues and wars in which the Germanic and Scandinavian powers used to waste their strength and destroy their mutual confidence, have ceased. Russia is an object of dread now; but she was a still greater object of dread in 1788: and with reason. She was at that time urging a successful war against Turkey—a war which seemed likely to be finished in Constantinople. Austria was her associate, in the hope of sharing the spoil, and Denmark was united to her by treaty. France, occupied by her own internal affairs, was incapable of moving; and Prussia, Holland, and England, contented themselves with forming the celebrated Triple Alliance, but showed no signs of the purpose of their union.

Sweden was at peace with Russia, and, what is very

rare between contiguous countries, had not even an injury to complain of. But her rash sovereign ventured to stop the progress of Russian aggrandisement. He made an offensive alliance with Turkey, and assembled an army in Finland; and, when his motives were demanded by Russia, required that she should make peace with Turkey on terms to be dictated by himself.* In the war which followed Sweden was unfortunate. Nothing, indeed, but the intervention of the Triple Alliance prevented her destruction. But the diversion was most valuable to Turkey, and probably enabled her to struggle on until a subsequent intervention of the Triple Alliance, which, as it did not proceed to actual war, would be here out of place, obtained for her a tolerable peace.

The balance of power had little to do with the events between the deposition of Louis XVI. and the Consulate. It was not until the resources of France were collected in the hands of Bonaparte, that their real magnitude was perceived.

In considering the wars which lasted from the rupture of the peace of Amiens in 1803 until the peace of Paris in 1814, it is often difficult to separate those which were provoked by the aggressions of France, from those in which she was assailed for the mere purpose of reducing her power. Many were of a mixed character. Such was the war with England. It is scarcely possible that England would have preferred war to the evacuation of Malta

* Note of the Swedish Court, July 1, 1788. Schoell, *Histoire Abrégé*, &c., vol. xiv. p. 84.

if she had believed that there was safety in peace. And, on the other hand, her desire to put down the preponderance of France, would scarcely have induced her to resume arms only a year after she had laid them down, if the conduct of France in Holland, in Switzerland, and in Italy, had not afforded her a lawful pretext. The same may be said of the Coalition of 1805. France certainly had not observed the stipulations of the treaty of Luneville; but her breach of them was not of sufficient importance to have authorised a war on the part of Austria or Russia, if such a war had not been thought a favourable opportunity of restoring the balance of power. The war declared by Prussia against France in 1806 was still less founded on any immediate provocation by France. The Prussian declaration* is full of reproaches, and of very just reproaches, of the conduct of France towards third parties, and of well-founded anticipations of future evil to Prussia; but contains scarcely a single precise complaint of injury actually suffered by herself.

The war on the part of Austria in 1809 was the first which can be considered as a pure intervention to restore the balance of power. The Spanish war had by that time begun to show its dangerous character; and France, anxious to avoid being encumbered by a new enemy, had endeavoured to avoid offending Austria. The Austrian Court, therefore, was forced to state, as grounds for its declaration of war,† 'That nations were falling around

* Declaration of Erfurth, Oct. 9, 1806. Ann. Reg. vol. xlviii. p. 800.

† Austrian Declaration, April 6, 1809. Ibid. vol. li. p. 691.

her, that lawful sovereigns were torn from their subjects, and that the danger of universal subjugation threatened even the happy subjects of Austria.'

The conduct of Austria in 1813 was a more striking instance. For nearly four years she had been in intimate connection with France. Only a year before she had by express treaty—that of March 14, 1812—guaranteed to France her existing territories, and joined on her behalf in the invasion of Russia. But, in the meantime, the French armies had been destroyed. Prussia had turned against her, and, if Austria would do so too, it seemed probable that the rest of Germany would follow the example. The paper by which Austria, in the person of her Emperor, declared her intention to join her enemies against her ally, maintains, in its most unqualified form, the lawfulness of attacking a preponderant power merely because it is preponderant.

That paper states that—

> Austria, in all her measures, had been directed by the principle that, as all balance of power in Europe had been destroyed by the boundless superiority of France, no real peace was to be expected unless that superiority was diminished. That by one means or by another, by negotiation or by force of arms, a new state of things must be effected. That France would hear of no proposition for peace that should violate the integrity of the French empire; and that the consequent necessity of war was engraven on the heart of every Austrian.*

It must be obvious that such interferences are matters of

* Declaration, August 11, 1813. Ann. Reg. vol. lv. p. 422.

danger and difficulty. The sovereign against whom they are directed is, by the supposition, already so powerful as to excite the dread of his neighbours. No single one among them, therefore, can oppose him, but at the heavy penalty of an expensive and dangerous war. Recourse, then, must generally be had to a coalition; and experience has shown how difficult it is to form a coalition, or to give to it unity of purpose or perseverance.

On these grounds we found our belief that the right of armed intervention, for the purpose of preserving the balance of power, is less liable to abuse than almost any other international right.

It is not necessary to enter into a long exposition of the differences between the right of intervention which we have just been discussing, and that which is created by a supposed inconvenience or danger arising to other nations from events occurring in the interior of a country. The first is, the privilege of the weak against the strong; the second, that of the strong against the weak. The circumstances which give rise to the first are tolerably definite, and must always be evident. Those which create the second are incapable of definition, and generally incapable of proof. If we examine the statements of evils suffered or apprehended from the domestic affairs of independent nations, on which the most remarkable modern interventions have been founded, we shall find them in general too vague to be susceptible of refutation, or too frivolous to deserve it.

The evils and dangers, for instance, which Austria, Russia, and Prussia held forth to the world as a justification of the first partition of Poland, were, that the disordered state of that Republic forced them to incur expense in securing the tranquillity of their own frontiers, and exposed them to the uncertain but possible consequences of the dissolution of Poland, and to the danger of seeing their own mutual harmony and friendship destroyed.

'In consequence hereof,' continues the Manifesto, 'their Majesties are determined to take immediate and effectual possession of such parts of the territory of the Republic as may serve to fix more natural and sure bounds between her and the three powers.'* In 1793, however, Russia 'found that her endeavours to maintain peace and quiet among her Polish neighbours had been attended with innumerable losses, and that some unworthy Poles had not been ashamed to approve the government of the ungodly rebels in the kingdom of France. From these considerations, Her Imperial Majesty, for the future safety of her empire, and for the cutting off for ever of all future disturbances, was pleased to take under her sway, and unite for ever to her empire, the territories between the Dwina and the Dniester.'† The King of Prussia stated 'it to be universally known that the Polish nation never ceased to afford to the neighbouring powers frequent grounds for just resentment; and that what principally excited their serious attention, was the unceasing spirit of rebellion, and the spread of the abominable notions by which all civil, political, and religious ties would be dissolved; destructive principles more to be dreaded in a country like Poland, always distinguished by party spirit, and powerful enough to be dangerous. In order, therefore, to prevent disturbances which have often shaken her own tranquillity and endangered her neighbours, there is,' says his Prussian Majesty, 'no other means except to incorporate her frontier

* Manifesto of September 18, 1772. Ann. Reg. vol. xv. p. 252.

† Russian Ukase. Ibid. vol. xxxv. p. 227.

provinces into our states, and for this purpose immediately to take possession of the same.' *

It was the singular fate of Poland to become more and more dangerous as she became more and more weak. She was dangerous in 1772, and was stripped of half her territories. She was found still more dangerous in 1793, and three-fourths of the remainder were taken from her. Still, however, she excited alarm among her great neighbours; and, in 1795, they finally dismembered her, and, as far as in them lay, extinguished the name and the nationality of Poland.

A remarkable similarity runs through all the state papers in which this right of intervention is asserted. They generally begin by disclaiming the wish to interfere with the affairs of any independent state; they then state the inconveniences suffered by their own frontiers, in consequence of the disturbed state of their neighbours; they add that the doctrines professed, and the examples held out, are subversive of the general tranquillity of Europe, and particularly of that of their own dominions; and they therefore propose to take military possession of the disturbed country, with no views of aggrandisement, but simply in self-defence.

It is seldom, however, that a nation rests its interference in the affairs of an independent neighbour on the bare ground of inconvenience or danger to herself. She generally supports her invasion by the further pretext, that it

* Prussian Manifesto. Ann. Reg. vol. xxxv. p. 229.

is for the purpose of redressing some injury suffered by some class, or even by some individual of the invaded nation; and she usually asserts that the interests of the class, or of the individual whose side she espouses, are those of the nation as a whole.

By far the most numerous interventions, in modern times, have been made for the benefit of individuals.

In a large majority of the nations of Europe, foreign affairs are the exclusive province of the Executive. In constitutional countries, indeed, the people have acquired a right to grant and appropriate the supplies, and thus to influence the conduct of the Executive; but these countries are, even now, comparatively few, and the power exercised by their assemblies operates slowly and indirectly.

There are few exceptions to the general proposition, that, during the period embraced by Mr. Wheaton's work, the foreign policy of the continental nations has been guided by their monarchs. Now, it is scarcely necessary to remind our readers, that this college of sovereigns is animated by an *esprit de corps* stronger than that which unites any other equally large class in the world. Their constant intermarriages have connected them by ties of consanguinity and affinity, which constitute them one family scattered over the different thrones of Europe; their remote and inaccessible position deprives them of society, on equal terms, except among one another. The only language which they hear speaks of devotion to their interests, and even to their wishes; and, what is still more important, they are all in the presence of a common

enemy, the advancing spirit of democracy. From the sixteenth century, when the United Provinces threw off the yoke of Philip II., every succeeding age has witnessed victories of democratic over royal power more and more important. The English revolution marked the seventeenth century; those of British America and France, the eighteenth; and, in the nineteenth, we have already seen the triumph of popular power in Spain, Portugal, France, Belgium, Saxony, and Norway. In every one of these countries, the royal power was, within our own memory, despotic. In every one of these, the sovereign is now* either a mere instrument in the hands of the representatives of his people, or derives his influence from the accident of his personal qualities. The philosopher may know that such changes are on the whole beneficial, but no sovereign ever believed so; or, if such were his belief, ever acted on it. Among all their mutual jealousies, sovereigns have always had a strong fellow-feeling for a king against a people. And where they have assisted the latter, they have generally done so in obedience to some overpowering motive of aggrandisement or self-defence, or to some sympathy between their own subjects and those of their brother, which they did not think it safe to resist.

Thus William, as Stadtholder of the United Provinces, interfered to protect the people of England from the tyranny of James II.; but it was partly to obtain a throne

* Written in 1843.

for himself, partly to use the resources of England in his struggle against France, and partly from the sympathy between the Dutch and English Protestants. If James had been a Protestant, and an enemy of France, he might have subverted the liberties of England unchecked by foreign interference.

About a century afterwards, Charles IV. of Spain and Louis XV. of France assisted our North American fellow-subjects to throw off the dominion of England; but neither of these monarchs thought fit to ground his interference on the right to protect subjects against the oppression of their sovereign. The Spanish declaration consists exclusively of complaints of English aggressions, and rests the justice of war, on the part of Spain, on the absolute necessity to curtail and destroy the arbitrary proceedings and maxims of the English maritime power.' * The French manifesto states that the King of France neither was, nor pretended to be, a judge of the disputes between the King of England and his colonies, and that he took up arms 'to avenge his injuries, and to put an end to the tyrannical empire which England has usurped, and pretends to maintain, upon the ocean.' †

The intervention of the Triple Alliance in the Belgian revolution of 1789 was of a mixed character. The events which led to that intervention are so remarkable, their influence on the subsequent history of Europe has been so great and so permanent, and they are so little known, or,

* Spanish Declaration of 1779. Ann. Reg. vol. xxii. p. 386.

† French Manifesto of 1779. Ibid. 390.

to speak more correctly, so little notorious, that we will venture to relate them at some length. Those who dislike an episode may pass over the next few pages.

The sovereignty to which Joseph II. of Austria succeeded, differed from all other great empires in being the result, not of conquest, but succession.

> Bella gerant alii, tu felix Austria nube,
> Nam quæ Mars aliis, dat tibi regna Venus.

In Austria Proper, and in the neighbouring provinces, which formed the ancient patrimony of the archdukes, his power was practically absolute; but everywhere else it was shared with other bodies or authorities more or less powerful, and was bound by restrictions more or less binding and more or less precise.

It is scarcely possible that an empire so constituted can enjoy internal harmony. A sovereign yields easily to the restrictions imposed by the constitution of his native country. He has been bred up to respect them; he sees that they are revered by all who surround him; and, if he perceives their inconvenience, he submits to it as the condition to which he was born. But he is not likely to feel much reverence for the institutions of communities which, though united under his sceptre, are not parts of his nation. He probably exaggerates their evils, and undervalues their advantages. His acquaintance with them is imperfect, and is derived principally from their opposition to his will. He finds them impede his foreign and domestic policy, and interfere with his schemes of

ambition and of improvement; and ends by believing them to be anomalies, which the welfare of his whole empire, and even of the portions of it which enjoy these mischievous privileges, requires to be removed.

When we say *He*, we do not mean to imply that such feelings are peculiar to a monarch. They belong to every sovereign power that has to deal with institutions differing from those of the metropolis. The English government, from the time that the Revolution defined our constitution, has adhered to that constitution more faithfully than any government that the world has ever seen. But it has never respected any independent legislature. The separate parliaments of Scotland and Ireland were never allowed free liberty of action, or even of resistance. It was only after their legislatures had been incorporated with that of England, and united in one aggregate imperial parliament, that those countries were governed constitutionally. Such an expedient has been supposed, and perhaps with truth, to be inapplicable to the British colonies. The consequence has been, that the legal rights of those colonies have been perpetually violated. Those which were strong enough were driven to separation—those which adhered to us in that great contest, or which we have subsequently acquired or founded, are either denied constitutions, or, if the local authorities oppose the will of the imperial parliament, find their constitutions changed, suspended, or annulled.

When such has been the conduct of the English government, a government, in general, scrupulously legal—

when it has been adopted not occasionally, or under the influence of a single party, but systematically, under Whigs as well as under Tories, under a reformed as well as under an unreformed House of Commons—no one can wonder that it was not avoided by Joseph II. In no part of his vast heterogeneous dominions was his power so limited as in the Netherlands. The institutions of the different provinces were various, but in all the ruling principle was that of an aristocracy, or of an oligarchy, rather than that of a monarchy. They had been wrested from the ancient dukes and counts by the nobles and by the clergy, and seem to have been formed on the principle, that the enemies to be opposed were the sovereign and the people. Education was in the hands of a clergy of immense wealth, fiercely intolerant, devotedly subservient to Rome, and so ignorant that, up to the time when Belgium became part of France, the university of Louvain taught that the sun goes round the earth. Justice was administered by hereditary seignorial courts, deformed by torture and by secret procedure. The supplies were annually voted by the states, and, as if to keep them in opposition, no officer of the government was allowed a seat in them. The population was numerous and rich, but ignorant, superstitious, blind instruments of the nobles in the villages, of the corporations in the cities, and of the priests in both town and country.

Such a state of society offered great temptations to a reformer, and at the same time opposed to him obstacles almost insurmountable. Joseph's own character added

force to the temptation and to the difficulty. He was urged to the attempt, and disqualified from effecting it both by his virtues and by his defects. If he had possessed less public spirit, less zeal for the welfare of his subjects, less contempt for ignorance, or less hatred of intolerance, he might have been satisfied to remain the prince of an unenlightened, unadvancing, but, on the whole, obedient people. He found them loyal to the House of Austria, and they would have continued so if he had attempted no improvements. On the other hand, if he had had less vanity and less presumption, or more knowledge of mankind, he would not have fancied that, by the mere assumption of absolute legislative authority, he could abolish constitutions which had endured for centuries. He would not have believed that an aristocracy would give up their legal jurisdiction, or a clergy surrender the education of the people, in obedience to an imperial edict. He would not have believed that, by a mere expression of his will, he could force a bigoted Catholic population to tolerate heresy, and to submit to the suppression of their convents, their processions, and their feasts. And, if he had had more justice, he would have felt that, admitting all his changes to be improvements, they were crimes when founded on usurpation.

It is a remarkable proof of the folly of the monarch, and of the submission of the people, that Joseph began his reforms by innovations in matters of religion, and that for several successive years those innovations were submitted to. He succeeded to the sovereignty of the

Netherlands in November 1780, and in July 1781 made his public entry into the capitals of the different provinces, and swore to observe their different constitutions. Only four months afterwards he published his edict of toleration, which allowed Protestants (including under that name the Lutheran and Calvinistic persuasions) to erect churches, and admitted them to the universities and to all civil privileges and offices. The provincial estates, the bishops, and the universities, remonstrated; the university of Louvain declared that 'toleration is the parent of dissension, since the Catholic religion holds all heretics devoted to damnation—a doctrine which it has always taught, and always must teach.' *

Within a few months afterwards, further edicts required the Catholic clergy to solemnise mixed marriages, and declared that the sons of a Protestant should be educated as Protestants. Further edicts in 1781, 1784, and 1785, forbad the bishops from appealing to the Pope, placed their episcopal administration under the control of the imperial government, and finally deprived them of jurisdiction with respect to marriages. Between 1783 and 1786, the greater part of the monasteries and nunneries, and many of the abbeys and canonries, were suppressed; and in 1786 the distribution of the parochial clergy and the boundaries of their parishes were altered, and changes were made with respect to the right of patronage and the qualifications of candidates. Having thus

* Jannsen, *Histoire des Pays-Bas*, vol. ii. p. 404.

offended the prejudices and injured the interests of the universities, the bishops, and the regular and secular clergy, the Emperor proceeded to attack the religious feelings and the amusements of the whole body of the people. He forbad religious processions and pilgrimages, the favourite recreations of that part of the community which, having but few pleasures, can ill afford their diminution—recreations too, which, uniting the enjoyments of society, of music, of exercise, and often of fine scenery, to a feeling of religious merit, are attractive to a Catholic population in a degree which a Protestant can scarcely estimate. And, lastly, he abolished the *Kermess*, a festival which, ever since Belgium was Christian, and probably long before, had been an annual season of enjoyment and festivity.

All this was submitted to. There can be no doubt that it excited the hostility which subsequent outrages inflamed into insurrection; but there was no open resistance until the promulgation of the edicts of January 1787. By these edicts the Netherlands were constituted a province of the Austrian monarchy, and divided into nine circles, subdivided into districts. The circles were to be governed by intendants appointed by the Austrian sovereign, and the districts by commissioners appointed by the intendants. All the ancient courts of justice were suppressed, and new tribunals with new forms of procedure, in which foreigners were to preside, were substituted. The old constitutions were in fact abolished.

Under such circumstances, the states of Brabant re-

fused to vote the annual supplies. It is unnecessary to say more as to the events of the remainder of that year and of 1788, than that Joseph, after having appeased his Belgian subjects by revoking the edicts of 1787, was mad enough to renew the contest by an attempt to change the education of the candidates for holy orders; the result of which was, that in November 1788 the Tiers État of Brabant again refused the supplies, and their example was followed by all the three estates of Hainault. In January 1789, Joseph issued an edict abolishing the estates of Hainault, and declared that he would in future govern that province as a conqueror. In February he abolished the Tiers État of Brabant, and as the two other orders, the clergy and nobles, refused to act in the absence of the Tiers État, on June 18 (about three weeks before the storm of the Bastile) he annulled the whole constitution of Brabant, and converted the government into an absolute despotism.

The immediate consequence was a large emigration, who found shelter within the Dutch frontier, organised there a considerable force, reentered Flanders in October, and gave the first impulse to an insurrection which, before the end of the year, forced the Austrian authorities and the Austrian soldiers to abandon the whole country, with the exception of Luxembourg and Limburg. The revolted provinces, nearly coextensive with the present kingdom of Belgium, declared their independence, and on January 10, 1790, formed themselves into a Federal republic, under the title of the United Belgic States.

Up to this time the Belgian opposition had enjoyed the sympathy of Europe. They had resisted great and manifest wrong, and had resisted it with courage and forbearance; and, what was of more importance, Joseph was the object of universal dislike and fear. Absolute governments disliked his innovations, free governments his despotism; and all Europe dreaded his unscrupulous and insatiable ambition. The governments with whom he was most unpopular were those connected by the Triple Alliance. Prussia had just wrested Bavaria from his grasp, at the expense of a serious war, and appeared on the point of being forced to the same extremity to prevent his dismembering Turkey. England and Holland had complained that he had violated the Barrier Treaty, and broken the engagements which were the price for which Belgium had been annexed to Austria. The scheme which, twenty-five years afterwards, was executed of substituting for the Barrier Treaty the annexation of Belgium to Holland, was seriously contemplated by England and Prussia, and earnestly desired by Holland. Deputies from the insurgent provinces were received at each of the three courts, and Holland even allowed the revolutionary army to be assembled and organised within her territory.

But within a few weeks after that army had entered Brussels in triumph, the fears, the wishes, in short, all the political views of the three powers, were altered. Joseph was dead, and a well-deserved confidence was placed in the justice and moderation of his successor.

Leopold withdrew public sympathy from the insurgents, by renouncing all the usurpations of his predecessor. The united Belgian provinces showed their unfitness for self-government by internal dissension; their folly and injustice by a wanton invasion of Limburg; and their weakness by its disgraceful failure; and, above all, the rapid progress of events in France rendered established governments unwilling to give further aid, or even countenance, to a revolution.

Under such circumstances, the ministers of England, Holland, and Russia, at the Congress of Reichenbach, declared, on July 27, 1790, their determination to take such measures as might be necessary to replace the Belgian provinces under the Austrian government, but with the enjoyment of their ancient constitutions.* For this purpose, a Congress assembled at the Hague in September 1790, consisting of ministers from the Four Courts and of deputies from the insurgents.

Its first act was to require from each party the immediate cessation of hostilities. The Belgians were mad enough to refuse; and the consequence was, that the Austrian troops advanced, overcame with ease a resistance no longer supported by public opinion, and, in the beginning of December, were in military possession of the whole country. The Congress, however, continued its labours; and, on December 10, 1790, a convention was signed by the ministers of England, Holland, Prussia, and Austria,

* Marten's *Recueil*, vol. iii. p. 74.

by which Austria confirmed to the Belgian provinces their respective constitutions as they had existed at the accession of Maria Theresa, and the three mediating powers guaranteed to Austria the sovereignty over the provinces, and to the provinces the enjoyment of their constitutions. This convention Leopold refused to ratify, unless the death of Maria Theresa were substituted for her accession, as the period from which the constitutions were to be restored. The alteration of treaties, after they have been signed by competent public agents, has always been opposed by England. She refused her assent to the proposed modification, and the convention therefore remained unratified.

Great importance has been attached to the failure of this mediation. An eminent historian seems to have thought that, if Leopold had ratified the convention, and thus obtained the guarantee of England, Belgium might have been preserved to Austria.* But, in fact, a train of events was then in progress which must have separated Belgium from Austria, whatever had been, in this respect, the conduct of Leopold. It was no want of assistance from England, Prussia, or Holland, that occasioned the loss of Belgium. Their common interest in keeping France from the Rhine, was a stronger motive than any guarantee; and if their efforts, and those of Austria, had been seconded by the Belgian people, it appears to us possible, we are inclined to say probable, that they might have succeeded,

* Coxe's *House of Austria*, vol. iii. p. 698.

and the subsequent calamities of Europe might have been averted. France might have escaped the intoxication which necessarily followed her early victories and conquests. Instead of fancying herself irresistible, and therefore rushing into war with England and Holland, she might have contented herself with repelling attack, and turned her attention to the reconstruction of her government.

But when the Belgian provinces, provoked, it must be owned, by intolerable injuries, threw off their allegiance to the House of Burgundy, they destroyed their only principle of cohesion, and their only source of national feeling, and of the exertions and sacrifices to which national feeling is the stimulus. They split at once into separate municipalities, without a common history, a common dynasty, a common interest, or, in fact, a common country. For the few months that intervened between the expulsion of the Austrians, in December 1789, and their re-entry, in December 1790, they enjoyed, indeed, self-government, and wasted it in dissension and civil war; but from that time till 1830 their influence over their own fortunes ceased. The battle of Jemappes made them French; the battle of Neerwinden restored them to Austria; the battle of Fleurus returned them to France; the battle of Paris placed them at the disposal of the Allies; and a protocol of half a dozen sentences presented them to Holland.*

The diplomacy of Austria, Prussia, and Russia, and the

* Schoell, *Abrégé des Traités*, vol. x. p. 534.

arms and diplomacy of France and England, have now erected Belgium into an independent state. The intervention, however, by which that event was accomplished, though in its form an intervention between the King of the Netherlands and his subjects, scarcely belongs to this branch of international law. The object of the intervening powers was not to promote the interests of either of the contending parties. Neither party, indeed, received much sympathy. The King of the Netherlands had not governed constitutionally; not one of the limited monarchs on the continent had done so. It requires centuries of experience to convince such a sovereign, or his ministers, that the existing constitution ought to be superstitiously observed, whatever may be the immediate convenience of breaking through its restraints. But in spite of the irregular acts of the administration, the people had enjoyed a degree of liberty and prosperity unexampled during any previous portion of their history. Europe did not hold them justified in risking these substantial advantages, and exposing to chance the future destinies of their country by rising against a government which, with all its faults, was believed, whether truly or falsely we will not at present decide, to have been among the best on the continent.

But it was obvious that, if the contest were prolonged, it would occasion an European war—a war which must have overthrown the recently-elected dynasty of France, and have produced extensive mischief to every other portion of Europe.

The five powers, therefore, interposed, not for the sake of the people, which they erected into a new state, but purely for their own preservation. That Belgium may continue independent must be the prayer of every enlightened statesman. The freedom of her institutions, the general prudence of her government, and the admirable system of railroads, which has given to her territory a compactness and a facility of intercourse unequalled on the continent, afford reasonable grounds for hoping that this prayer may be granted. But many years must elapse before the Belgians can form a real nation—before they cease to be a mere aggregate of communities, separated in many instances by a mutual dislike, and in all by mutual jealousy, and kept together only by the pressure of the great monarchies which have assumed the control of their destiny.

The treaty of 1827, by which the Kings of England and France, and the Emperor of Russia, agreed to put a stop to the civil war between the Porte and the insurgent inhabitants of Greece, was perhaps, as far as France and England were concerned, the most disinterested interference of sovereigns in behalf of a people that has occurred in modern times. They were impelled, however, by a sympathy on the part of their own subjects with the Greeks, which the number and the force of its causes rendered irresistible. The long duration of the contest—the ferocity with which it was carried on by the Turks—the apparent success of Greece against her gigantic enemy until she was crushed by the invasion from Egypt—the

fear of having to witness the utter extirpation of a Christian population by Mahometans, that Christian population being the descendants of those to whom the world owes its civilisation—all these were motives which it would have been hard to withstand, even if the interference had been matter of difficulty or danger. But the three powers did not choose to assign these as their exclusive, or even as their principal, motives. They expressed, indeed, a wish to stop the effusion of blood, but they justified their interference by 'the interest of the repose of Europe, and the impediments which the contest threw in the way of European commerce, and the piracies which it occasioned, exposing the subjects of the high contracting parties to considerable loss, and rendering necessary burthensome measures of protection and repression.'* To arrest these evils they required each party to consent to an immediate armistice; and, to prevent their recurrence, they proposed that the Turks should evacuate Greece, but that Greece should remain a dependency of Turkey, paying to her a tribute, and governed by local authorities, elected indeed in the country, 'but in the nomination of whom the Porte should have a defined right.'

The narrowness of the ground assumed by the contracting parties gave to the Porte the barren advantage of having the best of the argument. It answered, and with truth, that the pretence of any serious injury inflicted on France, England, or Russia, by the war, was absurd, and

* Treaty of London for the pacification of Greece, July 6, 1827. State Papers, 1826, 1827, p. 635.

that it was equally absurd to suppose that troubles existing in a single corner of the vast Ottoman Empire could be communicated to other European countries; but that, even if this were the case, each power ought to punish its own seditious subjects: and the Porte promised not to interfere in their behalf. On the other hand, it required to be allowed to deal with its own subjects according to its own laws—asking no assistance for itself, and trusting that its friends would give none to its enemies.*

The three powers replied by sending a fleet, which, after blockading the Turkish armament in the Turkish harbour of Navarino, entered the port in line of battle, and moored their vessels alongside of the Turkish ships, but, according to their own statement, 'with no hostile intention.' The Turks, however, after allowing them to pass the batteries and take their position, 'committed the aggression' (to use the language of the European Admirals) 'of firing on them,'† and met with the usual fate of a Turkish fleet in such a contest—utter destruction.

The naval force of Turkey having been thus destroyed, a French army entered Greece, drove out the Turkish troops, and left the country to enjoy the degree of independence which it might suit the interests of the three great powers, which had taken the management of its affairs, to confer on it.

We have seen how timid has been the interference of

* Manifesto of the Sublime Porte, 1827. State Papers, 1042.

† Declaration of the Admirals after the action of Navarino. Ibid. 1051.

princes on behalf of subjects against their sovereign; but when the case has been reversed, and the sovereign has been the party to be assisted, it has seldom been thought necessary to disguise the real motive, or to defend the interference on pretended grounds of self-defence. This may be seen by a short notice of the principal interventions of this kind which Mr. Wheaton has mentioned.

The first is that of the King of Prussia in 1787, in support of his sister, and of his brother-in-law, the Stadtholder of the United Provinces. The popular party, which has always been powerful in those provinces, especially in Holland Proper, the most important among them, had been for some years actively endeavouring to restore the republican government, which had prevailed during the best periods in their history; or, if a Stadtholder were retained, to limit his power. As early as the beginning of 1785, Frederic the Great had required the States-general 'to maintain the Prince-Stadtholder in the full enjoyment of the prerogatives which were the rightful attributes of his person and family.'* In 1784 he repeated his requisition, 'freely confessing that he was not perfectly acquainted with the internal constitution of the republic; but holding it evident that, as the States-general had irrevocably deferred to the father of the Prince of Orange, for himself and his heirs, the Stadtholdership, with all the rights and prerogatives thereto belonging, such rights and prerogatives could not be

* See his letter to the States-general of January 21, 1783, quoted in his letter of 1784. Ann. Reg. vol. xxvii. p. 720.

recalled without his consent;' and ending with a declaration that, 'though he did not presume to meddle in the private affairs of the States, or to encroach on their freedom, he never would tamely suffer the Stadtholdership to undergo any alteration.*

These remonstrances and menaces were ineffectual. The States of Holland deprived the prince of the command of the army, forbad the use of Orange colours, and, what seems to have been the bitterest of all insults, allowed the Pensionary of Dort to drive through the gate at the Hague, which had never before been open to any carriage except the Stadtholder's. The prince retired to Guelderland, to be in the neighbourhood of the Prussian territories. His wife, however, who was always a vehement but unfortunate politician, resolved to support her husband's interests in person at the Hague. She was stopped on her arrival at the frontier of Holland, near Schoonhoven, on June 28, 1787, and forced to return. Frederic the Great was dead; but his successor, Frederic William, the brother of the princess, considered, to use his own language, this injury to the princess as an insult offered to himself, and demanded immediate and suitable satisfaction.† The terms of this satisfaction were afterwards stated to be a written apology, the punishment of those who had stopped the princess, and an invitation to her to come to the Hague as negotiator for her husband.

* See his letter to the States-general of January 21, 1783, quoted in his letter of 1784. Ann. Reg. vol. xxvii. p. 322.

† Prussian Memorial, August 6, 1787. Ibid. vol. xxix. p. 278.

The States were ready to apologise, but not to admit that the act was illegal, or that those who effected it were punishable. The result was, that on September 17, 1787, a Prussian army, commanded by the Duke of Brunswick, then the most celebrated general in Europe, entered Holland, and by October 10 was in possession of Amsterdam. The Prince of Orange was restored to his full powers of Stadtholder, and declared to hold them, not as formerly by a separate delegation from each province, but as the fundamental institution of the confederacy;* and England and Prussia engaged to maintain that form of government against all attacks, of whatever nature they might be.†

The standard of international morality is still low in England; but it certainly has risen since 1787. If such events could now occur, no British House of Commons would address the Crown in such terms as these:—

> The rapid and brilliant success of the Prussian arms, under the conduct of the Duke of Brunswick, affords us peculiar satisfaction, both as it was the means of obtaining the reparation demanded by the King of Prussia, and as it has enabled the Provinces to reestablish their lawful government.‡

There can be no doubt that the rapid and brilliant success of the Prussian arms, which excited such satisfaction in the British Parliament, had much to do with the subsequent misfortunes of Europe. Five years afterwards a

* Act of Guarantee of June 17, 1788. Ann. Reg. vol. xxx. p. 218.

† Treaties of April 25, 1788. Ibid. p. 273.

‡ Address of the House of Commons, November 9, 1787. Ibid. p. 268.

more important member of the college of sovereigns than the Stadtholder was threatened with deposition; and the Emperor of Germany had to redress injuries to his brother-in-law and sister, more serious than those which the King of Prussia had avenged by the subjugation of Holland. The precedent set in 1787 was blindly followed in 1791; and the right of sovereigns to mutual support against nations was again nakedly professed by the Convention of Pilnitz. In that memorable document the Emperor and the King of Prussia declared that they

> looked on the situation of the King of France as an object of common concern to all the sovereigns of Europe, and that they trusted that none of the powers would refuse to employ the most efficacious means to enable the King of France to consolidate, in the most perfect liberty, the basis of a monarchical government suitable to the rights of sovereigns, being themselves determined to act speedily, with necessary force, to obtain their common end.*

The first result of this convention was a declaration of war, by France, against Austria,† and by Prussia against France.‡

The joint manifesto of Austria and Prussia breathed the spirit of the Convention of Pilnitz. It declared that the supreme authority in France, being never-ceasing and indivisible, the King could neither be deprived, nor voluntarily divest himself of any of the prerogatives of royalty, but was obliged to transmit them entire to his

* Convention of Pilnitz, August 21, 1791. Ann. Reg. vol. xxxiii. p. 190.
† April 21, 1792. Ibid. vol. xxxiv. p. 203.
‡ July 24, 1792. Ibid. p. 225.

successors; that the allied sovereigns did not mean to interfere with the internal administration of France, but that they were determined to reestablish in it order and public security; and finally, to procure to the King perfect safety, until he could enjoy the satisfaction of seeing his subjects repent, and of finding them submissive to his supreme authority.*

The Prussian armies were again confided to the Duke of Brunswick, and it was supposed that the general who had overrun Holland in a few days would be in Paris, at the farthest, in as many weeks.

Mr. Wheaton's view of these events agrees with our own. He rejects as mere pretences the other grounds—grounds which we have not thought worth enumerating—which were assigned by Austria and Prussia as justifications of their coalition against France. He states truly that they made war in order to reestablish Louis XVI. But when he adds, 'that the causes which led England to abandon the system of neutrality which she had adopted in this war of principles are to be found in the diplomatic correspondence and the Parliamentary debates of 1792,' † he uses expressions which do not appear to us to be borne out by the facts. The war in which England became entangled, and of which she ultimately bore the principal burden, was not in its origin, on her part, a war of principles. It was a war founded on the ordinary motives of war—ambition on the part of France; and on

* Austrian and Prussian Manifesto, August 4, 1792. Ann. Reg. p. 236.

† P. 271.

the part of England self-defence, joined to a determination to enforce the obligations of treaties and to preserve the balance of power.

It is true that, after the exercise of the royal functions had been withdrawn from Louis XVI. on August 10, 1792, Lord Gower was withdrawn from Paris; but the letter of recall contained a declaration that England would maintain her neutrality in everything regarding the internal affairs of France. It is true, also, that the executive council which formed the provisional government of France was not formally acknowledged by England; but this circumstance did not interrupt the intercourse between the two governments until a few days before they were actually at war. And if France had adhered to the enactments of her existing constitution—if she had renounced all war for the sake of conquest *—she would have had nothing to fear from British interference. We must, indeed, have despised the folly and detested the wickedness of her factions; but our contempt and our abhorrence would have been exhaled in the harmless form of speeches and addresses.

But the ignorant and unprincipled men, to whom August 10 gave temporary power, carried into the foreign affairs of France the habits of violence and fraud acquired during the previous three years of revolution. They appear to have been almost unconscious of the existence of international faith or international law.

* Constitution of 1791, sec. 16.

Without assigning any pretext, except that the King of Sardinia, commanding the passage of the Alps, might in time have become a dangerous enemy,* they overran Savoy, and converted it into the French department of Mont Blanc. Having obtained military possession of Belgium, they subverted all its institutions, and were preparing to incorporate it with France. They opened the navigation between the Scheldt and the sea, which, by the stipulations of treaties with Holland, of which England was the guarantee, was always to remain closed.

These stipulations, indeed, ought never to have been required by Holland, or sanctioned by England. They deprived mankind of one of the great highways of nature, merely for the purpose of enriching Rotterdam and Amsterdam at the expense of Flanders and Brabant. But they were contained in treaties to which France was a party, and which she could not abrogate at pleasure. The Convention published the well-known decree of November 19, 1792, offering fraternity and assistance to every people desirous of recovering its liberty; and, as a supplement to that decree, 'the French nation declared that she would treat as an enemy the people which, refusing to accept or renouncing liberty and equality, should wish to keep, to recall, or to negotiate with its prince or its privileged castes.' And France 'promised and engaged herself not to sign a treaty, or lay down her arms, until the independence of the people into whose territory she had once penetrated

* See the Speech of Lebrun, Minister for Foreign Affairs, Sept. 15, 1792.

should be confirmed, and popular government, freedom, and equality established there.*

And in order to direct this measure pointedly against England, a member of the government, Monge, the Minister of Marine, in an official communication to the seaports of France, declared that the French 'would fly to the succour of the English, would make a descent on the island, would lodge there fifty thousand caps of liberty, plant there the sacred tree, stretch out their arms to their republican brethren, and the tyranny of the government would be destroyed.'

These were acts which must have produced remonstrance from England; and, if that remonstrance had been unattended to, would have justified war, whether France had been governed by a convention or a king. The King's speech on the opening of the Session in December 1792, expressed uneasiness at the intention apparent in France to excite disturbances in other countries, to disregard the rights of neutral nations, to pursue views of conquest and aggrandisement, and to adopt towards our allies—the United Provinces—measures conformable neither to the Law of Nations nor to the positive stipulations of existing treaties, and stated that some augmentations had been made to our naval and military force.† An order in council was issued, prohibiting the exportation of wheat; and two acts were passed, one subjecting aliens to restrictions nearly the same as those which are now usual on

* Decree of December 15, 1792.

† Ann. Reg. vol. xxxiv. p. 167.

the continent of Europe, the other prohibiting the circulation in England of French assignats.

None of these were acts of hostility; but, taken together, they showed that the English government believed war to be probable. M. Chauvelin, who had been accredited by Louis XVI., and still resided in London, though without fresh credentials from his existing government, demanded, in the name of the executive council of the French Republic, whether France ought to consider England as a neutral or an enemy.* Lord Grenville, then Foreign Secretary, after remarking that the government by which M. Chauvelin had been accredited had ceased to exist, stated that England saw, in the decrees of the Convention, the declaration of a design to encourage revolt in all neutral countries—that she would never consent that France should arrogate the power of annulling, at her pleasure, solemn treaties, guaranteed by all the powers of Europe—and, further, that England, adhering to the maxims which she had followed for more than a century, would never see with indifference that France should make herself, directly or indirectly, sovereign of the Low Countries.†

The French reply, after denying that the decrees were to apply, unless in the sole case of the general will of a nation, clearly and unequivocally expressed, calling the French nation to its assistance and fraternity—affirmed that the rights of nature authorised France to open the

* Note of December 27, 1792. Ann. Reg. vol. xxxv. p. 114.

† Note of December 31, 1792. Ibid. p. 116.

Scheldt, which had been closed against Belgium by treaties made by a master who sacrificed the inviolable rights of his subjects in order to secure his own despotism—that France renounced conquest, and that her occupation of Belgium should continue only during the war, and until the Belgians could be independent and happy. If these explanations were insufficient, if France were still obliged to hear a haughty language, and hostile preparations were continued in the English ports, she would prepare for war.*

Lord Grenville replied that these explanations *were* insufficient; and that to threaten Great Britain with war, because she judged it expedient to augment her forces, was a new ground of offence.† And a few days afterwards, on receiving the news of the execution of Louis XVI., he intimated to M. Chauvelin, on January 24, 1793, that, his functions being entirely terminated by the death of the King whom he represented, he must leave the kingdom.

On February 1 following, France declared war against England on the following grounds:—

That the King of England had persisted in giving proof of his being ill-disposed towards the French nation, and of his attachment to the coalition of crowned heads.

That he had recalled his ambassador from Paris, and refused to acknowledge the ambassador from the French Republic.

That he had impeded the purchase of corn and arms in England by French citizens, or by the agents of the Republic.

* Note of the French Executive, January 7, 1793. Ann. Reg. vol. xxxv. p. 119.

† Note of January 18, 1793. Ibid. p. 125.

That he had prohibited the circulation of assignats.

That he had subjected Frenchmen in England to inquisitorial and vexatious forms.

That he had given protection and pecuniary aid to emigrants. And, finally,

That he had augmented his naval and military forces.*

Many wars have been *undertaken* on motives as inadequate as these. But, since the invasion of Holland by Louis XIV. in 1672, there is not, perhaps, a single case in which such frivolous grounds have been *assigned*.

The dominant faction in the Convention seems not merely to have been eager for war, but eager to be the first to declare it, and to have feared that a few weeks' delay would produce the declaration from England. For, even if we had yielded to the terms which France dictated—if we had acknowledged the Republic, had repealed the Alien Act, had permitted the exportation of corn and arms and the circulation of assignats, had expelled the emigrants, had disarmed our fleet, and had consented to see Savoy and Belgium become departments of France—still our treaty with Holland would have forced us to defend her against invasion.

Even if we had descended still lower in submission, and had consented to violate that treaty, we should have been unable, even at that price, to preserve our neutrality. When once it was proclaimed that, in the contest between the democratic and the monarchical principle, all who were

* French Declaration of War against England and Holland, February 1, 1793. Ann. Reg. vol xxxv. p. 139.

not for France were against her, no option was left to us but that of active resistance or active cooperation. In fact, France no more offered a real option to England than Prussia and Austria offered an option to France. Austria and Prussia exacted from France, and France exacted from England, concessions and conduct which the exacting party knew to be impossible, and of which the mere demand was itself an act of hostility. We must repeat, therefore, our dissent from Mr. Wheaton, when he states that England abandoned her system of neutrality. She can no more be said to have abandoned that system than a man who is knocked down by a robber can be said to have abandoned his system of keeping the peace.

The interferences of France, Austria, Prussia, and Russia, against the people of Spain, Naples, Sicily, and Piedmont, in 1820 and the two following years, are so connected that they may be treated as a single event. It is scarcely necessary to remind the reader that when Spain, in 1808, was abandoned by her royal family, their place was supplied by a Cortes elected by the people, representing the whole national will, and therefore armed with the whole national authority. In the exercise of their functions, they established a constitution for the present and future government of Spain. This constitution, which afterwards became notorious under the name of the Spanish Constitution of 1812, copied the ultra-democratic models afforded by France in the early periods of her revolution. The whole legislative power—for the King had only a suspensive veto—and a large portion of the

executive power, was vested in the Cortes, a single assembly, appointed by an elaborate process of indirect election, reposing ultimately on a nearly universal suffrage. The inhabitants of each parish appointed a parochial delegate, the delegates of each district a district elector, and the electors of each province a deputy for every 70,000 souls. The assembly thus constituted sat for three consecutive months in every year, and was represented during the recess by a permanent committee. The King could not prorogue or dissolve it; but it was elected for only two years, and no person could sit twice consecutively. After thus providing for the inexperience of the Cortes, care was taken that it should be in permanent opposition to the executive, by enacting that no member should receive for himself, or solicit for any other person, any employment under the Crown.

Such a constitution was obviously, we might almost say ludicrously, ill-framed; but it was less mischievous than the despotism which, in less than 300 years, destroyed the morality, the knowledge, the wealth, and even the courage of Spain, and left her at length without statesmen, without administrators, without officers, without soldiers, without sailors, and, what was perhaps still worse, without the consciousness of her deficiencies, and apparently without the power of understanding them when pointed out.

The constitutional government provided ill against a counter-revolution. Their mismanagement, indeed, had been so deplorable, that probably no precautions would

have been sufficient. Within a few weeks after Ferdinand's return from France in 1814, he abolished the constitution, dispersed the Cortes, resumed absolute power, and employed it in the persecution of all who had endeavoured to improve the institutions of Spain.

In the present state of Europe, however, it is seldom that, in her contests with despotism, democracy is permanently worsted: the fire still lives in the ashes. Less than six years afterwards, on January 1, 1820, an insurrection broke out in Andalusia; and, though unsuccessful in the south of Spain, extended itself to the east, the north, and the west, and by the beginning of March was triumphant in Madrid. By a decree dated March 7, Ferdinand declared that, the general will of the nation having been pronounced, he had resolved to swear to the constitution of 1812, and directed its immediate promulgation. A constitutional Cortes was assembled; the chiefs of the liberal party were called, from exile and from dungeons, to direct the administration; and in less than three months Spain, from a despotism, became almost a republic.

This was the first interruption of the general tranquillity which followed the Congress of Vienna. It was the first popular insurrection against an established government which had occurred during the nineteenth century. Such events have since become familiar to us; we are able to estimate their relative importance, and to foresee their progress, and, to a certain extent, their results. But the great majority of those who, from surrounding countries, watched the Spanish Revolution, were unassisted by ex-

perience. Surprise, admiration, vague fears, and hopes still more vague, were the feelings which it excited.

There was no country more ready for these impressions than Naples. In the beginning of the sixteenth century —the time at which it seems to have been decided for most European nations whether they should advance in civilisation, remain stationary, or even recede—Naples became a province of Spain. For more than two centuries she languished under Spanish misgovernment; and when at length she obtained a separate sovereign, it was still a Bourbon, whose ignorance, prejudices, and selfish carelessness, left her under the yoke and the whip of subordinate oppressors. The rashness with which the ruling family rushed into war with the French Directory—the precipitation with which they fled from the danger which they had provoked—the cruelties which deformed their first return, and the cowardice of their second flight —had rendered them odious as well as contemptible. When the Congress of Vienna recalled him to the Neapolitan throne, Ferdinand promised a constitution 'under which the people would be the sovereign, and the monarch only the depositary of the laws.' This proclamation is dated March 1, 1815. On June 12 following he signed a treaty with Austria, by which he engaged to admit no changes in his dominions inconsistent with the principles on which Austria governed her Italian provinces.*

* See the Documents—Edinburgh Ann. Reg. vol. xiii. p. 293.

Of these two irreconcileable engagements, it may be easily imagined that he preferred the latter. His conduct towards Sicily had been still more atrocious. He destroyed an existing constitution which had been framed with his assent, and had been for years working with his participation. It was natural that a people, thus injured and deceived, should endeavour to extort from the fears of their sovereign what they had vainly expected from his sense of honour or of faith; and the facility with which, both in Naples and in Sicily, a constitution was substituted for a despotism, shows that the change was the work, not of a party, but of a nation. On July 2, 1820, 150 men at Nola raised the cry of 'God, the King, and a Constitution!' And by a proclamation issued on the 6th, the King declared that the general wish of the kingdom for a constitutional government having manifested itself, he consented to it of his full and entire will, and promised to publish the basis in eight days. He was informed, however, that the constitution demanded by the people was the Spanish constitution; and the next day a proclamation issued, by which the King declared that he had appointed his son Francis vicar-general of the kingdom; that his son had arranged the basis of the constitution on the Spanish model; and that he, the King, confirmed the act. In less than three months, the first parliament of the Neapolitan nation had assembled.

In the meantime, the people of Sicily adopted the Spanish constitution as readily, or rather as eagerly, as those of Naples. But, with the exception of the two

districts of Trapani and Messina, which adhered to the union with Naples, the Sicilians declared themselves a separate independent nation, and established their seat of government at Palermo.

It is seldom that a revolutionary party allows to others the right of self-government which it claims for itself. The government of Palermo endeavoured by military force to compel Trapani and Messina to become a part of the independent constitutional monarchy of Sicily; and the government of Naples used the same means to compel Sicily to be a part of the independent monarchy of the Two Sicilies. The Neapolitan aggression was the successful one: and at the cost of much bloodshed and money, and some bad faith, and the waste of the best troops of Naples in garrisoning the island, the separate independence of Sicily was, for a time at least, suppressed.

But a storm was rising in the north, which threatened a speedy and violent end to the new liberties of the south. In 1815, the sovereigns of Austria, Russia, and Prussia had made the celebrated treaty of the Holy Alliance—a treaty by which, after recognising the important and neglected truth, that the principles of Christianity, the principles of justice, charity, and peace, ought to govern the relations of governments as well as those of individuals, the relations of public as well as those of private life, the Three Princes declared that they would consider themselves as fellow-countrymen and brothers, and give to one another, on every occasion, assistance and succour. France was not invited to join in this alliance. England

was invited, and refused. In 1818, however, at the Congress of Aix-la-Chapelle, a declaration was signed by the ministers of England and France, as well as by those of Austria, Russia, and Prussia, which, without expressly alluding to the Holy Alliance, appears to recognise its principles. The declaration affirms, in substance, that the intimate union existing between the five powers is a sacred pledge for the future tranquillity of Europe; that the object of that union is the maintenance of peace, and of the stipulations by which it has been consolidated, and generally the repose of the world; and that the means are, a strict observance of the principles of the Law of Nations (*droit des gens*)—principles on which the independence of each nation, and the stability of the community of nations (*association générale*) depend.*

The language, both of the treaty and of the declaration, is studiously vague: but it was now thought necessary to give to it some precision. A meeting of the sovereigns of Austria, Russia, and Prussia took place at Troppau, and was afterwards transferred to Laybach. The papers issued by that Congress show what, in the opinion of the majority of the parties to the declaration of 1818, was meant by the words 'peace' and 'repose;' what were the principles of the Law of Nations which were to be strictly observed; and what were the mutual assistance and succour to which the parties to the Holy Alliance were pledged. The monarchs declare that they are bound by

* Declaration of the Five Powers, November 15, 1818. State Papers, 1818, 1819, p. 18.

sacred engagements to exercise their incontestable right of coercing a nation which, by revolting against its sovereign, has assumed an attitude hostile to all legitimate authority.* They declare that their objects are the inviolability of all established rights, the independence of all legitimate governments, the tranquillity of states, the rights of thrones, and the repose of the world.† They declare that changes in the laws or in the administration of states, whatever be their apparent utility, or even necessity, ought to spring from no source but the free will, the considerate and wise impulse of those to whom God has given power, and whom He has made responsible to Himself. Everything else leads to revolutions and to mischiefs, far worse than those which it may be attempted to remedy. Penetrated by these eternal truths, they proclaim them frankly and vigorously; and, while they respect the rights of legitimate power, they regard as null, and as disavowed by the national law (*droit public*) of Europe, all reforms effected by revolt and force.‡

None of these papers were signed by the French minister, though subsequent events showed that his government approved of their contents.

It is some comfort to find that England, though she had been seduced into becoming a party to the declaration of 1818, protested against this interpretation of that engagement, against this theory of international law, and against

* Circular, December 8, 1820. State Papers, 1820, 1821, p. 1150.

† Austrian Declaration, February 13, 1821. Ibid. p. 1181.

‡ Circular of May 12, 1821. Ibid. p. 1201.

the conduct which this theory and engagement were supposed to justify.

The British government denied that any general right of interference against revolutionary movements in independent states was sanctioned by the Law of Nations, or could be made prospectively the basis of an alliance. Admitting the right of a state to interfere where its own immediate security or essential interests were seriously endangered by the internal transactions of another state, they declared this right to be an exception to general principles of the greatest value; to be capable of arising only out of the circumstances of each special case; to be justified only by the strongest necessity, and to be limited and regulated thereby; and to be insusceptible of being so far reduced to rule, as to be incorporated into the ordinary diplomacy of states, or into the institutes of the Law of Nations.*

The rest of the story is quickly told. The King of Naples was summoned to Laybach, and found the monarchs resolved to exact the pure unqualified submission of the Neapolitan people to his absolute authority, and the garrisoning the country by Austrian troops. These terms were refused by Naples. About the beginning of March 1821, 50,000 Austrians entered the country, the constitutional army disbanded on their approach, and in a few weeks Ferdinand was again the absolute sovereign of the Two Sicilies; and the principal members of the constitu-

* British Circular, January 19, 1821. State Papers, 1820, 1821, p. 1160.

tional government were exiles, or enduring the rigours of despotic imprisonment.

During the few weeks employed by the Austrian army in reestablishing absolute government in Naples and Sicily, a constitutional revolution broke out and was suppressed in the continental dominions of the King of Sardinia. On March 10, 1821, the Spanish constitution was proclaimed in Alexandria. On the 13th, the King, Victor Emmanuel, abdicated, leaving the crown to descend to his brother Charles Felix; but nominating the present king, then Prince of Carignano, regent. On the same day the prince announced the adoption of the Spanish constitution, and on the 15th swore to observe it. On the 21st, however, he fled to Novara, the head-quarters of a small body of troops, who refused their assent to the change. On April 8, the Austrian troops entered Piedmont; and on the 30th, just a month from the beginning of the revolution, were masters of Turin. The only results of this rash movement were the substitution of Charles Felix as king for Victor Emmanuel, the death, imprisonment, or exile of many of the best Piedmontese, and the occupation of the country by 12,000 Austrian troops.

But though the Holy Alliance interposed rapidly and effectually to crush constitutional government in Italy, for a long time it seemed likely that the people of Spain would be allowed to frame their own institutions. Russia, indeed, in her characteristic hatred of liberty, and contempt or ignorance of international morality and of international law, had seized the earliest opportunity to

denounce the Spanish Revolution as a crime (*attentat*); to proclaim that the object of the declaration of Aix-la-Chapelle in 1818 was the prevention of revolutions, or, in other words, of constitutional changes not proceeding from the free will of the sovereign; and to propose that the five powers, parties to that engagement, should require from the Spanish Cortes an immediate submission to their king.* But England denied the premises, and refused to adopt the conclusion. She denied that the alliance between the five powers was intended as a union for the government of the world, or for the superintendence of the internal affairs of other countries. She denied that the Spanish Revolution menaced other states with the direct and imminent danger which alone justifies external interference; and she protested against a conference charged with the commission of deliberating on the affairs of Spain.† The proposal made by Russia was not accepted; and, with the exception of the representation made by the ministers of Austria, France, Russia, and Prussia, on July 7, 1822, to the Spanish Executive, as to the importance of providing for the personal safety of the royal family,‡ we are not aware of any concerted demonstration against the Spanish constitution, until the sovereigns or ministers of

* See the Answer of Count Nesselrode to the Chev. Zea Bermudez, $\frac{20 \text{ April}}{2 \text{ May}}$ 1820; Memoir of the $\frac{18}{30}$ April 1820. State Papers, 1819, 1820, pp. 941–943.

† Minute of May 1820, communicated to France, Prussia, and Russia. Ibid. 1822, 1823, p. 71.

‡ State Papers, 1821, 1822, p. 895.

the five great monarchies met at the Congress of Verona in the autumn of 1822.

The affairs of Spain were not the motive of that congress; and it appears probable that, if they had not been brought forward by France, they would have remained unnoticed. In fact, experience had calmed the alarms excited in the absolute monarchies by the first outbreak of the Revolution. The physical power of Spain to disturb her neighbours was absolutely null; and the moral effect of her example was not to seduce, but to warn. The army unpaid and unclothed; the clergy starving; the revenue partly uncollected, and partly taken in kind; the Cortes at war with every successive set of ministers, and most of the large towns in open rebellion against the Cortes; the American provinces lost; one great and spreading civil war in the north; and twenty unconnected ones in the south and east;—such were the results exhibited by two years and a half of popular rule.

The early prognostic of the British government, 'that there is no portion of Europe, of equal magnitude, in which a revolution could have happened less likely to menace other states,' * was completely justified. Though the disapprobation of Austria and Prussia was unabated, their fears were at an end; and they were unwilling to incur expense and danger without an object. And though Russia was eager for a pretext to reappear in the south of Europe, her distance rendered her incapable of acting without the concurrence of all the intermediate powers.

* British Minute of May 1820. State Papers, 1822, 1823, p. 72.

But France was influenced by motives totally different from those which affected the Holy Alliance. For the last hundred and fifty years one of the ruling principles of her policy had been to procure the subservience of Spain. For this purpose, in the first partition treaty, she required a large portion of the northern frontier of Spain to be ceded to her. For this purpose Louis XIV. wasted the blood and the treasure, and even risked the independence of France, in order to place a Bourbon on the throne of Spain; and few French statesmen have denied that the object was worth the vast sacrifices by which it was attained. For this purpose he forced his grandson, while scarcely yet firmly seated on that throne, to abolish the established law of inheritance in his new dominions; to violate the will of Charles II., and thus to destroy the only titles which gave him a pretence to the crown; and to substitute the Salic law, in order that Spain might be under a Bourbon as long as a male Bourbon line should exist. For this purpose, when the Bonaparte dynasty was substituted in France for that of the Bourbons, Napoleon ran yet more frightful risks, and made still more destructive sacrifices, in order to effect a similar substitution in Spain.

But the only means by which France can obtain or preserve an ascendancy in Spain, is by subjugating the mind of the monarch, and through him, or through his favourites, controlling the government. The antipathy between Spaniards and Frenchmen—perhaps the two populations in Europe most opposed in character to one another

—and the jealousy and fear with which the weaker nation looks on her fierce and unscrupulous neighbour, indispose Spain towards France whenever the will of the Spanish people can operate. The only government, therefore, which France will voluntarily tolerate in Spain, is that of an absolute monarch—her own blind but irresistible instrument. In her wildest democratic madness, while surrounding herself with affiliated republics, she never attempted to revolutionise Spain. The traditional policy was obeyed even by the Convention and the Directory. Still impelled by these motives, France appears to have resolved from the beginning to strangle the liberty of Spain.

The Revolution (says M. de Chateaubriand) had made Spain English. Under her new institutions, and the influence acquired by Great Britain during the war of independence, it became clear that our enemies would predominate in the councils of Madrid; and then change would follow change till a corrupt legislature, or the weakness of a prince, occasioned a disastrous alteration in the law of the royal succession. Not merely the family interest of the Bourbons, but the safety of France, depends on perpetuating the Salic law in Madrid. Is that law in danger? Then let France and Spain become republics, or prepare instantly to conquer Spain and unite her to France.*

At the beginning of the Spanish Revolution, France, just relieved from the presence of the Allied armies, did not feel strong enough to act openly. We know, however, from the confession of one of her ministers, that 'everything that could be done against the constitutional system

* Congrès de Verone, vol. i. p. 363.

was done. It was difficult to supply the extravagant demands for men and money made by the leaders of bands; but assistance was given to them, and insurrection was stirred up wherever it was possible.' *

In the autumn of 1820, a large body of French troops was stationed along the Spanish frontier. The motive assigned was the exclusion of a contagious disorder then prevailing in Catalonia and Arragon. Before the end of the year the disorder had ceased; yet the military cordon was not only maintained, but increased, until it swelled to a formidable army. Spain complained; but the answer, as contained in the speech of the King on the opening of the Session of June 4, 1822, was, 'that the season required the continuance of the precautions which had kept the contagion from the frontiers of France, and that malevolence alone could discover in such measures a pretext for misrepresenting his intentions.' With this assurance Spain seems to have been satisfied.

At length the time came when the mask was to be thrown off. As it appeared clear that the Holy Alliance would take no active measures, France found that she must either herself attack Spain, or suffer her to remain constitutional. It was a necessary consequence of the civil war which she had stirred up in the north of Spain, that France should be forced to take precautions to prevent

* The public reporters were excluded from the sitting of Deputies on February 8, 1823, at which the speech, of which this is an extract, was delivered. But the concurrent testimony of private reporters proves that a statement to this effect was made by M. de Villèle.

her frontier from being occasionally crossed by parties in flight or pursuit, and that these precautions should be expensive and sometimes ineffectual—that French criminals should take refuge in Spain—that the Spanish press should attack the French government—and that the commerce between the south of France and the provinces which were the seat of war should fall off. On these grounds France maintained that she had a special right of war against Spain, independent of the general right of monarchies to put down revolutions.

In the beginning of October 1822, M. de Chateaubriand, representing France at the Congress of Verona, required the ministers of England, Austria, Russia, and Prussia to state what would be their conduct if France were involved in a war with Spain. Three probable occasions of war were mentioned:—1. An invasion of the French soil by Spanish troops, or an official invitation by the Spanish government of the subjects of France to rebellion. 2. The formal deposition of Ferdinand, or legal proceedings against him, or against any of the members of his family. 3. A formal act of the government affecting the succession to the crown; or, in other words, the abolition of the Salic law.*

Austria, Russia, and Prussia answered that they would make common cause with France; England, that she was not aware what cause of complaint France might have, and that she could not answer hypothetical questions.

* Chateaubriand, *Congrès de Verone*, vol. i. p. 113.

Neither Austria nor Prussia, however, desired to see a French army master of Spain, and France herself wished to avoid the expense of a war. 'At the end of the year,' said M. de Villèle to M. de Chateaubriand, 'I might have a surplus of twenty-five millions; why do these wretched foreign affairs come to disturb our prosperity?'* It was agreed, therefore, by the four powers—England standing aloof—that each should address a note to its minister at Madrid, stating the terms on which they would continue on friendly terms with Spain. Each note denounced the state of things in Spain as destructive to that country, and dangerous to Europe. The Russian note stated the precise source of evil to be, 'that the will of the King, the only authentic organ of communication between Spain and the other European powers, was chained;' and required 'that he should be placed in a position enabling him to remove these sources of complaint and anxiety.'† The Prussian note required that the King should be restored to entire liberty of action, and enabled to give to Spain such institutions as she really wanted, and might lawfully desire (*les institutions que demandent ses besoins et ses vœux légitimes*).‡ The Austrian note required that the King should be restored to liberty—not mere personal liberty, but the liberty without which a sovereign cannot answer to his high vocation; a liberty which will enable him to put an end to the misfortunes of his people, and to substitute, for a mode of government

* Chateaubriand, *Congrès de Verone*, vol. i. p. 156.

† State Papers, 1821, 1822, p. 911. ‡ Ibid. p. 914.

which experience has shown to be impracticable, a state of things in which the rights of the monarch may be combined with the real interests and lawful desires of all classes among his subjects.* The French note was more ambiguous. It declared that France united with her allies in the firm determination to repress revolutionary principles and revolutionary movements; that she would assist, to the utmost of her power, in promoting the happiness and prosperity of Spain; but that her minister would be recalled, and still more efficacious measures taken, if she lost the hope of seeing in Spain the amelioration which the love of Spaniards for their king entitled her to expect. A supplemental explanatory despatch stated this amelioration to be, that Ferdinand should be in a position by himself, and of his own proper authority, to modify the existing constitution.†

The notes were received at Madrid early in January 1823. The Spanish answer to those of Austria, Prussia, and Russia, declared nakedly the determination of Spain to adhere to the constitution of 1812.‡ The ministers of those courts immediately left Madrid. The answer given to France was, that all the assistance which Spain desired from France was negative; that she should be satisfied if France would merely abstain from active injury; and that she was unalterably attached to the constitution of 1812, and determined never to acknowledge, in any power, the right of interfering in her affairs.§ The

* State Papers, p. 920.

† Ibid. 1821, 1822, p. 926.

‡ Ibid. p. 933.

§ Ibid. 1822, 1823, p. 759.

French minister then quitted Madrid. On January 28, 1823, the French Chambers met. The King's speech stated that 100,000 Frenchmen, commanded by a French prince, were ready to march, invoking the God of St. Louis to preserve the Spanish throne to a descendant of Henry IV., to save that fine kingdom from ruin, and reconcile her to Europe; but that the war would be averted if Ferdinand VII. were free to give to his people institutions which they could hold only from him, and which would put an end to the anxiety of France. 'I have consulted,' said the King, 'the dignity of my crown, and the honour and safety of France. We are all Frenchmen; we shall always be agreed when such interests are to be defended.'

England offered a mediation, which was refused by both parties. Spain, torn by civil war, and no longer supported by England, fell almost without resistance, and Ferdinand was restored to the free agency 'without which a sovereign cannot answer to his high vocation.' It was a just retribution to France, that the only institution which he gave to his people was the abolition of the Salic law, and the reestablishment of the old principle of succession—one of the three contingencies to avert which France had destroyed the constitution.

On considering the events of which we have given this imperfect outline, we think that the doctrines now prevalent in Europe, as to the right of one country to interfere between the sovereign and the subjects of another, may be stated thus.

It does not appear that interference, for the mere purpose of preventing the oppression of subjects by their prince, is now held lawful by any nation. No country interfered to prevent the oppression of Spain by Ferdinand, on his return from France in 1814. And yet the Allies, who had given to him the means of being mischievous, had the power; for they were then the dictators of Europe, and, if the Law of Nations sanctioned it, seemed liable to the duty of restraining him: and it is difficult to believe that they had not the will. England, at least, could not have seen with indifference the reestablishment of the Inquisition, and the exile, imprisonment, or death of those who for years had fought by her side. The powers who gave the kingdom of Poland to Russia, Piedmont to the House of Savoy, and Naples and Sicily to the Italian Bourbons, have not interfered to check the misgovernment of those countries. According to modern international law, it appears to be doubtful whether a nation has any rights against its sovereign; and to be certain that, if it have any, they are rights which no third party is justified in supporting.

On the other hand, it appears to be the opinion of Russia, Austria, and Prussia, that the rights of a sovereign against his subjects are whatever he may think fit to claim. We have already quoted a passage from the Austrian and Prussian manifesto of August 4, 1792, which denies that a king can be deprived, or voluntarily divest himself, of any portion of his supreme, never-ceasing, and indivisible authority; and the same sentiment, though seldom so nakedly

expressed, is stated or implied in all the state-papers of these three monarchies. They further assert that, by international law, all third parties are justified in interfering to enable a sovereign to retain or recover his authority. Whether they should or should not actually interfere they have considered a matter of discretion, to be governed by the circumstances of each case; but we are not aware that any one of them has ever abandoned, or doubted, or even limited the right.

England admits the validity of every established government, whether depending on usage, on popular revolt, or on royal usurpation. 'Subject to the universal exception, that every state has a right to protect itself against great mischief, or even imminent danger, arising out of the domestic affairs of another, she denies that international law allows one state forcibly to interfere in the internal affairs of another, on any pretext or to any extent whatever. She denies that third parties can lawfully interfere to force a people to obey their sovereign; as she denies that they can lawfully interpose to force a sovereign to respect the liberties of his people.

It is difficult—we are inclined to say impossible—to state what is the doctrine of France on this and, indeed, on any point of international law. During the last 200 years she has tried almost every form of government, almost every kind of ruler, and almost every variety of fortune. She has been a feudal kingdom, a republic, a military despotism, and a constitutional monarchy. She has been governed by kings, by soldiers, by courtiers, by

lawyers, by mistresses, and by mobs. She has sometimes been a maritime power, and sometimes has depended solely on her armies. Sometimes she has been commercial, and sometimes she has excluded commerce by a wall of prohibitions. Twice she has been nearly mistress of the continent; three times she has been laid helpless before her enemies, and been saved only by their mutual jealousies. All her maxims, and all her opinions as to internal legislation and administration, have varied with the changes in her form of government, and in the character of her rulers. Her external policy has, of course, been influenced in its details by her fortunes. But, with the exception of the comparatively short period of Fleury's ministry, it has been directed by one leading principle. That principle is—that France, or (as she usually calls herself) the Great Nation, is entitled, directly or indirectly, by actual coercion or by influence, to govern the rest of Europe; and that all means are to be adopted, and all principles are to be avowed, by which that end can be obtained. Her state-papers contain, on every subject of international law, every doctrine, however irreconcileable; for every shade of doctrine has, at one period or at another, seemed convenient to her. It is useless, therefore, to cite them even as evidence of the opinion of France; for they show not what, in the opinion of France, the Law of Nations then was, but what, for the purposes of the moment, it seemed to her advisable to represent it to be.

The length at which we have dwelt on the subject of

intervention, the most important and the most doubtful question in international law, forces us to pass rapidly over the remainder of Mr. Wheaton's conclusions.

It is with great regret that we must express a doubt as to the accuracy of his statement, that 'the laws of war have been improved, and, among the more civilised nations, the usages of war sensibly softened.' We doubt whether the laws of war between enemies—for these are the laws of war of which Mr. Wheaton speaks—can be considered as having been materially improved during the 200 years embraced by his work. The language of text-writers has been more Christian-like than that of Grotius, or of his earlier followers; but there are few instances in which governments, or national tribunals, have attempted to deprive war of any of its fierce prerogatives. The right of confiscating debts due to the members of a hostile community affords, perhaps, one of these instances. That right was in full force at the time of the peace of Aix-la-Chapelle; but in 1817,* the Court of King's Bench in England declared an ordinance of the King of Denmark, in 1807, purporting to exercise the right to be contrary to the Law of Nations, and therefore void. And by the supplemental articles to the treaty of Paris between England and France, of May 30, 1814, a similar confiscation, made by the French government in 1792, was declared to have been undue, and France bound herself to indemnify the British sufferers. The treaty of 1795, between England and the United States, pronounced such a confiscation to

* In the case of Wolff *v.* Oxholm (6 Maule and Selwyn, 92).

be unjust and impolitic; and on the whole, notwithstanding the decisions to the contrary in the American courts,* we think we may venture to hold that it is no longer sanctioned by international law. But without absolutely denying that there may be other instances of improvement in the laws of war, we are unable to point one out. And it is to be remarked, with respect to the solitary case which we have mentioned, that England has not yet abandoned the claim to confiscate, as *droits* of the Admiralty, vessels which, having entered her ports in time of peace, are found there at the breaking out of war—a claim not to be distinguished, in principle, from the confiscation of debts.†

On the other hand, we fear that instances may be shown in which the laws of war have become more barbarous. Until the end of the last century, the Arts were privileged in war. Frederick the Great, Master of Dresden, would not enter the gallery without the permission of the sovereign whom he had driven from his capital. According to the principles avowed by France from 1792 to 1815, he might have carried off its contents to Berlin. It is true that, in 1815, France was forced to restore her plunder—that is to say, what war had given war resumed; but in 1814, when the Allies tore from her her other conquests, they allowed her to retain all her spoil in pictures and statues—a conduct not easily reconciled to a firm belief that their original acquisition was a violation

* See the cases collected. 1 Kent's Commentaries, p. 64.

† This right is now abandoned by England.

of the laws of war. Architectural monuments have fared still worse. As they could not be carried away, they have been destroyed. The blowing-up of the Kremlin by France; the burning of the Senate-house at Washington by England; the attempt to destroy the Bridge of Jena by Prussia—an attempt defeated by an appeal not to the laws of war, but to the convention of Paris—are instances of wanton destruction which must occur to every reader.

Mr. Wheaton thinks that the usages of war, as distinguished from its laws, have been sensibly softened. It is difficult to suppose that even armies have not shared the improvement in humanity and gentleness, which is the most remarkable characteristic of the eighteenth and nineteenth as compared with the sixteenth and seventeenth centuries. But we look in vain for the evidence. Some of the worst exhibitions of military ferocity have occurred within our own memory. Such was the proclamation of the Duke of Brunswick, when he invaded France in 1792:—

> The national guards (said this monstrous document), who shall fight against the allied troops, and shall be taken in arms, shall be punished as rebels and disturbers of the public peace. And their Imperial and Royal Majesties declare, on their faith and word as Emperor and King, that if the royal family of France be not immediately set at liberty, they will inflict the most exemplary and ever-memorable avenging punishments, by giving up the city of Paris to military execution, and exposing it to total destruction.*

Fortunately for his reputation as a man, the Duke of

* Ann. Reg. vol. xxxiv. pp. 230, 231.

Brunswick was unable to execute his threats; but what must have been the state of public opinion when such threats could be uttered!

Such, again, was the decree made by the French Legislature, of the 7th Prairial, An. 2 (May 26, 1794), forbidding their troops to give quarter to Englishmen or Hanoverians. And this decree was acted on:—

> How many prisoners (said Barrere, in his official statement of the result of the battle of Fleurus)—how many prisoners do you suppose we have made? How do you think that the army of the Sambre has executed your decree against the perfidious English? The result of this great day is one single prisoner! (Loud applause.)*

Such was the decree of the French government, in January 1798, condemning to death all neutral sailors found on board English ships.

Such was, in 1799, the execution by a French army, after a long consultation, of 4,000 Arnauts and Albanians, who, when Jaffa was taken by assault, had surrendered on an express promise of safety. Bourrienne—who was present at the different councils-of-war, where the fate of the prisoners was the subject of four days' deliberation—tells us that one of the motives for their massacre was, the discontent of the troops 'at seeing their provisions shared by enemies who had been withdrawn from their just vengeance, since the laws of war had pronounced sentence of death on the garrison of Jaffa.' † Their crime was a resistance of two days.

* Moniteur, 12 Messidor, An. 2 (June 30, 1794).

† Bourrienne, vol. ii. p. 223.

A less revolting but still more cruel exercise of military power was the refusal of France, in the war which followed the peace of Amiens, to exchange prisoners with England —a refusal which condemned tens of thousands of the subjects of each country to misery and disease, without any motive except the infliction of suffering. If we come down to our own immediate times, and look at the two principal wars of the last ten years, can it be said that the conduct of the British troops in Afghanistan, or that of the French in Algeria, shows a perceptible mitigation of military violence? We fear that the present state of the laws and usages of war is one of the proofs that the last 200 years, though they have done much to alter, have done little to improve international law.

We feel bound to express a still stronger dissent to Mr. Wheaton's statement, that, since the peace of Westphalia, the right of maritime search has been confined to times of war. The truth is, that since the peace of Westphalia that right has been extended to times of peace, though with different motives and on different grounds.

Subject to the general rule that public vessels are not to be interfered with, every commissioned vessel has a right, during war, to search every other vessel whatever. She enjoys that right by the law which entitles her to seize, at sea, enemies' property and contraband of war, and she enforces it in foreign vessels *as foreign vessels.* This right, of course, ceases with its cause. A ship is a part of the territory of its country, and no one is justified in

knowingly entering a foreign territory without permission. On land this rule is, in general, easily maintained; for the frontiers of most countries are marked and well known. But the only sign of a ship's nationality is her flag; and she can assume any given flag, and change it at her pleasure. If, therefore, the mere assumption of a flag be conclusive evidence of her right to use it, a vessel on the high seas becomes practically exempt from all jurisdiction. She has only to hoist the flag of some country whose cruisers are not to be met with in the seas in which she is sailing, and all enquiry is at an end. It follows that, if any jurisdiction is to be exercised on the high seas, it must either be exercised over all vessels without reference to their nationality, or it must carry with it the right to ascertain their nationality. Until the present century, the only crime of which a vessel on the high seas could be guilty was piracy; and, by the international law of all civilised nations, pirates have no national rights. They are the common enemies of the human race, and may be hunted down by any force, and tried and punished by any tribunal, whatever be the nation which they disgrace. Until the present century, therefore, it never could be necessary, in time of peace, to ascertain the nationality of a vessel on the high seas. Unless she were a pirate, she could not be interfered with; if she were a pirate, no flag could protect her. This is the answer to the remark, that the right to board a vessel on the high seas, in order to ascertain her nationality, was never exercised until it was claimed by Britain after the termination of the late war.

It was never exercised before, because it was never wanted before—because, in fact, it never could be used before.

But, in 1807, the United States of America declared the maritime slave trade to be a crime; and their example has been followed by every Christian nation, and every Christian nation has solemnly engaged to use the utmost exertions to 'put' it down. The British government held that this reprobation of slave-trading by the whole civilised world assimilated it to piracy, and entitled every nation to seize and punish slave-traders, to whatever country they might belong. Had this been acquiesced in, the nationality of a vessel would have remained unimportant: she could be seized only for piracy or slave-trading, and against neither of these imputations could her flag have been a defence.

The English Courts of Admiralty defeated this attempt. They decreed the restitution of foreign slave-traders, and established the doctrine, that slave-trading is an offence cognisable only by the country of which the offender is a subject, or by some authority to which that country has expressly delegated its jurisdiction. The necessary consequence is, an enquiry into the nationality of a vessel suspected of slave-trading. If she could protect herself from all investigation, by merely hoisting a flag different from that of the cruiser which attempts to detain her, all attempts to intercept slavers on the high seas must cease. If a ship, with her deck crowded with negroes, and the 'Mary of London' painted on her stern, had a right, on showing Swedish colours, to pass unchallenged through a

British fleet, the mutual engagements of the Christian world to put down the maritime slave trade would become solemn emptiness. But such an enquiry takes time, and loss of time at sea is always expense, and sometimes danger. If vexatiously pursued, it may occasion intolerable annoyance, and never can be endurable unless carried on with the utmost moderation and candour—candour and moderation which, we fear, have not been always exhibited by the lieutenants and midshipmen of the British cruisers. It is made, too, at the peril of the enquirer; that is to say, on the condition of making full compensation, if the suspicion which occasioned it, however apparently fair, should prove to be groundless. All the maritime nations of Europe and America, with one solitary exception in each hemisphere, have determined therefore, by mutual treaties, where, and by whom and how, it shall be effected. The United States and Portugal have, as yet, refused to become parties to this arrangement. The consequence is, as Mr. Wheaton has remarked in his work on the 'Right of Search,' * that these nations are placed in a much worse situation than if they had not thus separated themselves from the rest of the civilised world.

Unless the other maritime nations—or rather Great Britain, to whom the duty of suppressing the slave trade seems to have been abandoned—allow the mere assumption of an American or a Portuguese ensign to preclude all further enquiry, American and Portuguese vessels must

* Inquiry into the Validity of the Right of Visitation and Search, p. 161.

sometimes be visited by mistake. The treaties which regulate the exercise of the right of search provide a remedy for all injuries which it may inflict on the subjects of the contracting governments; but no remedy can be provided for the members of a nation which refuses to recognise the right. This state of things must be inconvenient to the United States, but does not justify Mr. Wheaton in denying that the right exists. His error appears to have been occasioned by his occasionally confounding the right of search for the purpose of *detention*, and the right of search for the purpose of *enquiry*, and from his always assuming that England exercises the latter right only by *treaty*.

It has been decided (and we think properly) that the right of search for the purpose of detention, or in fact for any purpose except that of ascertaining the nationality of a vessel, is the creature of treaty; and exists, therefore, only in as far as it has been expressly conceded. But the right of search for the purpose of *enquiry* was created not by treaty but by necessity. It arose as soon as slave-trading was declared a crime, and the Christian world agreed to suppress it. It is not extended but limited by treaty—confined to certain latitudes and to certain persons. America may or may not fully co-operate with the rest of the civilised world. She may become a party to all the clauses of the quintuple treaty, or only to a few of them, or even merely to those which regulate search for the single purpose of enquiry, or she may remain querulous and alone. But whatever course she

adopts—unless, indeed, she will maintain a fleet of observation sufficient to deter slavers from assuming her flag, a sacrifice which her previous conduct does not warrant us in expecting from her—we must repeat that it is certain that, as long as Europe continues her exertions to restrain the slave trade, American vessels will occasionally be searched. When a European cruiser meets with what she firmly believes to be a Spanish slaver, she will not allow the mere display of an American flag to be conclusive evidence that she is an American. In proportion to the confidence reposed in the sincerity of America as to the abolition of the slave trade, will be the tendency to believe, when a slaver shows an American flag, that it is usurped; and from time to time the cruiser will find herself to be mistaken.

It is scarcely possible, indeed, to believe that America herself can avoid exercising the right. She has employed for some years a force in the African seas, and another in the Gulf of Mexico, for the purpose of interrupting slavers. Do her cruisers board only those vessels which choose to display the American flag? If so, they must be useless unless when in company with a European cruiser. There can be little doubt that if they meet a vessel which they believe to be an American slaver, they board her, whatever be the colours which she may think it expedient to show.

It is remarkable, indeed, that while Mr. Wheaton, writing in the intensely anti-Anglican atmosphere of Paris, was denying to England the right to enforce her own laws with regard to her own vessels, if they thought

fit to assume the American flag, the real question in dispute was virtually conceded by Mr. Stevenson, then the American minister in London. 'Great Britain,' says Mr. Stevenson, 'has the undoubted right, and so have all other nations, to detain and examine the vessels of their own subjects, whether slavers or not, *and whether with or without a flag purporting to be that of the United States.*'* Now, it is obvious that the right to examine a European vessel must imply the right to examine every vessel suspected to be European, unless America can brand her vessels with some national mark incapable of imitation.

We cannot part with Mr. Wheaton without expressing a hope that he will translate his essay into English. It would form an excellent supplement to his great work on 'International Law.' There are many persons in his own country, and in ours, to whom it is inaccessible in its present form; and he must be anxious that his field of utility, and of fame, should be coextensive with the English language.

APPENDIX.

THE changes in international law which have taken place since the publication of this paper are considerable.

In 1843 I said that, 'according to modern international law, it appears to be doubtful whether a nation has any

* Mr. Stevenson's note of October 21, 1841. Slave-Trade Correspondence, 1841. Class D, p. 272.

rights against its sovereign; and to be certain that, if it have any, they are rights which no third party is justified in supporting.'

Both these propositions have since been denied by England, France, and Sardinia.

England has asserted, in the broadest terms, not merely that subjects have rights against their sovereigns, but that they are justified in asserting those rights by force; that misgovernment justifies rebellion, and that rebellion is evidence of misgovernment.

The following extract from a despatch* of Lord John Russell, dated December 27, 1860, states clearly and forcibly these principles:—

It appears that the late proceedings of the King of Sardinia have been strongly disapproved of by several of the principal courts of Europe.

The Emperor of the French, on hearing of the invasion of the Papal States by the army of General Cialdini, withdrew his minister from Turin, expressing at the same time the opinion of the Imperial government in condemnation of the invasion of the Roman territory.

The Emperor of Russia has, we are told, declared in strong terms his indignation at the entrance of the army of the King of Sardinia into the Neapolitan territory, and has withdrawn his entire mission from Turin.

The prince-regent of Prussia has also thought it necessary to convey to Sardinia a sense of his displeasure, but he has not thought it necessary to remove the Prussian minister from Turin.

After these diplomatic acts it would scarcely be just to Italy, or respectful to the other great powers of Europe, were the government of Her Majesty any longer to withhold the expression of their opinion.

* Part VII. Further Correspondence on the Affairs of Italy, p. 123.

The large questions which appear to be at issue are these: Were the people of Italy justified in asking the assistance of the King of Sardinia to relieve them from governments with which they were discontented?—and was the King of Sardinia justified in furnishing the assistance of his arms to the people of the Roman and Neapolitan States?

. . . . . .

That eminent jurist Vattel, when discussing the lawfulness of the assistance given by the United Provinces to the Prince of Orange when he invaded England, and overturned the throne of James II., says: 'The authority of the Prince of Orange had doubtless an influence on the deliberations of the States-general, but it did not lead them to the commission of an act of injustice; for when a people from good reasons take up arms against an oppressor, it is but an act of justice and generosity to assist brave men in the defence of their liberties.'

Therefore, according to Vattel, the question resolves itself into this: Did the people of Naples and of the Roman States take up arms against their governments for good reasons?

Upon this grave matter Her Majesty's government hold that the people in question are themselves the best judges of their own affairs.

Her Majesty's government do not feel justified in declaring that the people of Southern Italy had not good reasons for throwing off their allegiance to the former governments; Her Majesty's government cannot, therefore, pretend to blame the King of Sardinia for assisting them.

England has gone much further: she has given to insurrection the strongest moral support. Her fleet saluted the insurrectional flag of Sicily, and one of her national ships conveyed the deputation, which offered to the Duke of Genoa the Sicilian crown. She has gone further still. The fleet in which was the Neapolitan army by which Sicily was to be reconquered was retained for months in the

harbour of Naples, because England refused to say whether she would or would not intercept it.

In all my conversations with Prince Castel Cicala and Count Ludolf (says Lord Palmerston) I studiously declined to state whether the British squadron would or would not interfere to prevent the Neapolitan expedition sailing for Sicily.*

All these months the Sicilian insurrection had for preparation, and if they had been tolerably employed, Sicily might have achieved her independence. I cannot describe better our interference than by extracting from a journal which I kept at Palermo in January 1851 the following notes of a conversation with Prince Satriano, then viceroy of Sicily.

'Palermo: Jan. 11, 1851.

'The greatest difficulties,' said the prince, 'with which I have now to contend are the results of your unhappy interference in September 1848. Never was a more cruel piece of kindness. Sicily at that time had not suffered much from her revolution. The wretched provisional government had been amusing itself with making a constitution, as childish as might have been expected, in choosing a king, in driving out the only teachers that the island possessed, and in trying to revolutionise Calabria. They had not had time to spend much money, or to make us spend much. They had prepared no means of resistance, so that in less than a fortnight I should have been master of Sicily, probably without further bloodshed.

* See Lord Palmerston's Letter to Lord Napier of November 2, 1848. Correspondence of 1848, 1849, p. 555.

'Early in the morning of September 7, after four days' severe fighting before Messina, I received a note from your captain and the French one intreating a truce, during which the terms of capitulation could be arranged. I sent word that I was ready to cease firing as soon as the Sicilians did, and that I wished to know what were to be the bases of the proposed capitulation. No answer came for three hours, and then one so absurd that it must have been dictated by the mob of Messina. It proposed to leave to the decision of the insurgent parliament the question, whether I was to retain Messina or not. So I could only thank Captain Robb and Captain Nonay for their well-meant but fruitless mediation, and continue the attack.

'Four days after, when Messina was as submissive to the royal authorities as Naples, and the municipal authorities had resumed their functions, I had a note from the two captains to say that they were ordered by their admirals to require me to suspend operations against the rebels until France and England could settle the differences between my King and his subjects. I told the captains that if I was able to march, I should laugh at their interference—that neither Admiral Parker nor Admiral Baudin, nor both of them, could stop my army, unless it was absurd enough to march along the sea-shore, but that all my guns except two were unserviceable—that I had lost one in seven of my men, and that I could not move for five days—that during those five days I would take no offensive measures, but at their expiration I certainly

should march on Catania, whatever the English or French might do, unless I was expressly forbidden by my King.

'Unhappily for all Sicily, but particularly for Catania, the King was advised to submit to the dictation of Parker and Baudin. I was kept inactive for seven months. The revolutionary government bought steamers and guns in England —some of the latter they got from your government stores; they raised forced loans; they mortgaged the public revenues, particularly the municipal revenues of Palermo; trade, and to a great degree production, were interrupted; and even if, when you were pleased to let me move in April, I had been as little opposed as I should have been in the previous September, that interregnum of seven months would have done enormous harm. As it was you forced me to ruin Catania, and were very near forcing me to destroy Palermo. As to the atrocities which Admiral Baudin and Admiral Parker could not contemplate without interfering—in the first place they did not, indeed they could not, interfere till long after those atrocities had ceased. When they stopped me I had been for four days quiet master of Messina, and probably should have been master of Sicily without firing another shot. In the second place, they personally knew nothing of the facts. They were in the bay of Naples, 200 miles from Messina. They trusted to the reports of Captain Robb and Captain Nonay. And Captain Robb and Captain Nonay, who were at sea, trusted to what they could see through their glasses, and to what the townspeople, who fled to their ships, told them, with all the exaggeration of terror.

'Without doubt there was much cruelty and violence on each side. It was a war between two hostile races, neither of them very civilised. All my soldiers who fell into the hands of the insurgents were shot or torn to pieces. But was this a reason for taking measures which prolonged the contest? If the admirals believed the reports of their captains, they ought to have rejoiced to think that the submission of Messina must speedily be followed by that of the rest of Sicily.

'But in fact all of you assumed that we were to lose Sicily. Cavaignac hoped to see it a republic. You would not have been unwilling to be the protectors of its new king, who would probably have arrived in one of your steamers. You had been for months advising us to give it up quietly. You had at great length demonstrated to us that our expedition must fail, and you could not bear to see your prophecies so completely and so rapidly falsified.'

France and Sardinia have gone still farther. The invasions of Lombardy by Sardinia in 1848 and in 1849 were attacks on a power with which Sardinia professed to be on friendly terms, founded on no pretext whatever, except the misgovernment of Lombardy by Austria.

The following conversation with two eminent Piedmontese statesmen, extracted from the journal which I kept at Turin in 1850, will show the origin of those interventions.

Turin: Oct. 6, 1850.—We dined with Count Balbo. We talked of the state of the country.

'It is not,' said Balbo, 'hopeless, but it is alarming. Our debt is 400,000,000; our expenses are 120,000,000.

We call ourselves at peace, and we maintain an army of 50,000 men, or 1¼ per cent., on our population, which is as if you kept one of 400,000. We have increased everything except our revenue.

'That remains as it was before the war, only 80,000,000. Until I see some attempt made to fill, or at least to diminish, our deficit I cannot feel at ease.'

'And yet,' said one of the guests—M. Meligrado, the professor of constitutional law—'the country is prosperous; the new constitution, the statuto, as they call it, has produced great activity; prices are high, and the labouring classes are well employed.'

'I cannot believe,' said Balbo, 'that the statuto has yet had time to improve much our powers of production.

'The war made the fortunes of the military contractors, and gave good wages to those who made uniforms, muskets, and saddles; the peace has filled the hotels, and the refugees from Lombardy and Venice pass their lives in the cafés, and bid against one another for the lodgings; but this is not prosperity.

'I repeat that, until provision is made to meet the expenses of our unhappy war, no statesman ought to feel tranquil.'

'Could,' I said, 'that war have been avoided?'

'It could not,' he answered. 'Nobody knows that better than I do, for I declared it, and knew at the time what were the dangers that it brought with it.

'On that day I had been prime minister for four days. The statuto bears date March 8, 1848. I was appointed

minister on the 16th. On the 20th we heard of the insurrection of Milan, and d'Adda came to implore our aid, telling us that if we refused he had to go on to Paris.

'I saw clearly that the worst consequences of our refusal would not be French intervention, bad as that would be, but that in a week we should have a republic in Milan, a republic in Venice, a republic most certainly in Genoa, and most probably in Turin.

'I went instantly to the King, told him the news, and said that we must have immediately a cabinet council. The King, anxious to be constitutional, asked if he ought to be present. I said that his presence would not only be proper but necessary. It assembled about two o'clock in a room overlooking the Piazza del Castello, at that time filling rapidly with an excited mob.

'They were crying *Viva il Rè*; but with a manner which clearly showed that they meant *Viva la Republica.*

'The Milanese had asked for 3,000 men. This would have been absurd.

'Count Revel proposed that 10,000 men should be allowed to go as volunteers.

'"I think," said the King, "that if we are to act we should do it more decidedly."

'This showed me what were his views; and, as they agreed with my own, I looked round the table, and then, without alluding to Revel's proposition, I said, "Sire, I believe that we are all agreed that we should act as your Majesty expresses it, decidedly, and that the Minister of War should instantly take measures to move forward the

disposable part of the army: and I think that it may be advisable that your Majesty's resolutions should be instantly communicated to the people."

'"By all means," said the King; "and I hope that you will all dine with me." And thus, and in not much longer time than it has taken me to relate it, ended a council on which the fate of the kingdom seemed to depend.

'We immediately threw open the windows, and from the balcony proclaimed to the people that the army had been ordered to march on the Milanese frontier. Of course the news was received with applause—not indeed with the furious joy that would have been exhibited by our southern neighbours, for we are a calm and grave people, but with congratulations on the glorious career on which the country seemed to be entering, a little tempered by a consciousness of the perils which it was to encounter.

'Our dinner at the palace was serious. The King's dinners never lasted more than about half an hour or forty minutes, after which we took our coffee in a half-circle in the drawing-room, each with his hat under his arm, and the King went his round, saying something to everybody. This time he suddenly left us after having gone only half round. Dispatches from Milan had arrived, and he came back to tell us that the Austrians had been driven out. We rejoiced at having proclaimed our decision so soon. If made after this was known it would have lost half its merit and more than half its effect.

'I went home at night tired to death, and found a messenger waiting to tell me that Abercromby wanted to

see me. I sent word that I was undressing, but would receive him in my dressing-room. By the time that he came I was in bed.

'"Do you know," he said as he came in, "what you have been doing?"

'"Yes," I said, "we know what we have done, and we will stand by it."

'"Do you know," he continued, "that you have virtually declared war against a friend and ally, that friend and ally being one of the greatest military powers in Europe?"

'"Yes," I said, "we know that we have done all this, and we have done right; on no other conditions could the monarchy have been saved, as I could prove to you if I were not dying for want of sleep."

'"Well," he said, "after having done all this, sleep if you can." And I did sleep, for my conscience then was, as it now is, perfectly calm.

'By resisting the popular will, we might have lost our constitution, but we should not have preserved peace.

'"Do you recollect," he said, turning to the Countess, "the visit of Camille de Cavour?"

'"Yes," she answered. "When the King seemed to waver he came to urge you to proclaim yourself dictator, and to march even against his will. He said that he was ready to go barefoot to Milan."'

When the madness reached such men as Cavour, you may judge what were the passions of the people.

Thursday, Nov. 7.—Marquis A—— S—— paid us a

long and interesting visit. I mentioned to him Count Balbo's opinion that the war of 1848 was unavoidable.

'Considering,' he said, 'our previous conduct, I agree with Balbo. We could not wash our hands of the Milanese insurrection. We had been instigating it for years. The Executive, too, was paralysed. The Piazza del Castello was the seat of government. The sovereign and his ministers were not those who sate in council in the palace, but the mob below and its demagogues.'

'Could the second war,' I asked, 'have been avoided?'

'There was an interval,' he answered, 'in which perhaps it could. It was immediately after Gioberti's first ministry, after he had succeeded Balbo, had held office for a few days, and then had resigned.

'At that time Austria would have given to us not only an honourable peace, but the duchies of Parma and Placentia. This is the sort of gradual aggrandisement which suits the House of Savoy.

'But Gioberti, the day that he quitted office, became president of the most ultra-radical of the clubs, and attacked us and Austria and the armistice with a pamphlet which set the people on fire.

'The King, too, was anxious for war: he could not endure his defeat, and was resolved to play double or quits with fortune.'

The war of 1859 is too recent to require more than a very short notice. Though the unwise invasion of Piedmont by Austria in May 1859 enabled France to say that she was fighting in defence of an ally, no one doubts that

the real aggressors were France and Sardinia, and that the pretext was the misgovernment of Lombardy and Venice.

The invasions of the Pontifical States and of the Neapolitan dominions by Sardinia in 1860, were avowedly interventions in support of subjects against their sovereign.

Sardinia did not pretend that she had received even one shadow of an offence from the Pope or from the King of Naples.

I confess that I cannot think of these precedents without alarm.

It is true that the governments against which they have been directed have been unusually bad, but no government is free from defects on which an ambitious neighbour would not found a pretext for intervention.

Two years ago the government of the United States was supposed to be one of the best that the world had ever seen, and yet one-third of its subjects think its vices intolerable, and are enduring the horrors of civil war to escape from it.

We think the British government excellent. But our conduct to our Roman Catholic fellow-subjects, our appropriation to Protestant worship of their churches and their endowments, and our steady refusal to make any provision for their clergy, are a gross insult and a severe injury—an insult and an injury which would afford a fair ground for foreign intervention, if once the lawfulness of foreign intervention between a government and its subjects were admitted.

Another and a still more dangerous innovation, the most dangerous, perhaps, that democracy has ever forged, is the use of universal suffrage to determine international relations—that is to say, the appealing to the uneducated portion of the people to decide, whether their country shall stand independent or shall form a part of any other, and in that case of what larger political aggregate. This curse has been desolating South America for the last fifty years. The old Spanish provinces break up into smaller political units, reunite and break up again, according to the passions and the caprices of the lower classes, until cohesion is gone, and all are relapsing into barbarism.

This dissolvent principle has now begun its work in Europe. Have we thought what are to be its limits? If the numerical majority of the Tuscans, a year or two hence, wish to separate from Sardinia, are they to be allowed to do so? If Sienna or Pisa or Lucca declares by universal suffrage that it wishes to quit Tuscany, is it to do so? Are the Ionians* or the Irish to separate from England as soon as separation appears to be the will of the majority? If so, who can attempt to deny that the numerical majority of the Irish people, if entrusted with universal suffrage, and duly instructed by French agents and French writers and orators, would prefer any government in the world, and more particularly the Napoleonic *régime*, to Queen Victoria's rule?

And if one of the provinces of the Irish republic wishes to leave the others, and to become an independent Ulster,

* Written in 1862.—Ed.

is it to do so? Will Antrim have a right to break off its connection with Ulster, or Belfast that with Antrim?

The ceding, selling, buying, and exchanging subjects, like flocks of sheep, the transferring them from sovereign to sovereign, as the Congress of Vienna did in 1814, is shocking, but it is far less dangerous, and less repugnant to common sense and common morality, than this principle of spontaneous disunion under the pressure of foreign interference. Such transactions as the former are solemn acts, carefully considered; they are planned and effected by statesmen responsible to public opinion and to history. They may be injudicious and oppressive, but they are not the results of blind popular prejudice or of caprice. The people—that is to say, the uneducated portion of a nation—never take in more than one, or at most two, ideas at a time. Sometimes it is a religious fancy, sometimes it is a political one, sometimes a social one. It sways them absolutely, because it has no counterpoise. Under its influence they may break old connections or make new ones, without reference to their own permanent interests, or even to what are their most permanent feelings. Until now, at least in Europe, democracy disturbed by its follies only the internal affairs of a country. Now, it is to affect its foreign relations, and even the coherence of its parts.

I am glad to turn from these questionable alterations, or attempted alterations, on international law to the real improvement introduced by the treaty of Paris of 1856.

By that treaty England, Austria, France, Prussia, Russia, Sardinia, and Turkey, declared—1. The abo-

lition of privateering. 2. That a neutral flag covers enemies' goods. 3. That neutral goods are not subject to capture, though under an enemy's flag. 4. That blockades are not binding unless maintained by a force sufficient to prevent access to the coast of the enemy.

Of these four rules, the second had long been laid down by the northern maritime powers, and the fourth, though often grossly violated, was generally supposed to be law. The first and third were new. To these declarations the whole civilised world, with the exception of the United States, acceded. The American government refused its accession on the ground that, having a comparatively small national fleet, they depended in a maritime war on their privateers. But they proposed to substitute for it a declaration assimilating the laws of war on sea to those which prevail on land, and prohibiting therefore the capture or wanton destruction of merchant vessels. This proposal England rejected as a sacrifice of the means of annoyance given to her by her maritime preponderance.

In 1861, however, after the civil war between the North and South had broken out, the Northern, or, as they call themselves, the Federal states, proposed to accede to the treaty of Paris, by separate conventions with each of the European powers. England and France feared that such a convention might be interpreted as an engagement to treat the privateers of the South as pirates. Lord Russell, therefore, and M. Thouvenel proposed to add to their respective conventions, declarations that their respective governments did not thereby undertake any engagement

having any bearing, direct or indirect, on the existing civil war. To this declaration the American government objected. The conventions have not been signed, and privateering remains lawful in the Federal and in the Confederate states of America, but nowhere else.

America has not merely retarded the improvement of the laws of maritime war by refusing to concur in the abolition of privateering. She has introduced into that law a practice which, if it be not stopped by the general indignation of mankind, will in time almost destroy maritime commerce by destroying the ports on which it depends. By sinking a triple line of ships, filled with granite, across the entrance to Charleston harbour, she has permanently, and, as she boasts, irremediably, ruined that harbour.

I will not dwell on the inhumanity of attempting to destroy for ever the commerce, the wealth, even the subsistence of a whole city, indeed of a whole country—of a country which only a few months ago formed a part of the United States—a country in which, according to the statement of those who now try to ruin it, a large portion of the inhabitants are still attached to the Union—a country which, according to their own prediction, is within a few months to return to the Union. War is always inhuman.

If only the 80,000 inhabitants of South Carolina had been interested in the port of Charleston, other nations would have been shocked by its destruction, but would not have been aggrieved by it. But of the vessels that, in the year 1859, entered the port of Charleston, probably not one-tenth

belonged to South Carolina, not one-half belonged to the United States. More than half the shipwrecks which the loss of a port on that long dangerous coast will occasion every year, for centuries to come, will affect vessels and crews not belonging to the United States. The Stone fleet is to go on until there shall not remain a harbour or a refuge for twelve degrees of latitude, from the mouth of the Chesapeake to the extremity of Florida.

Maritime wars are frequent.

If the belligerent, which for the time being has the command of the sea, be permitted to ruin the ports of its adversary, every sea-board will in time be harbourless. What would be the state of the coasts of the continent of Europe if, during the revolutionary war, instead of blockading their harbours, we had turned their entrances, as the Americans boast to have turned those of Charleston, into labyrinths of sand-banks?

Ports and harbours are the property of mankind. They are the precious, and, on some coasts, the rare, gifts of nature. To destroy them in order to obtain a temporary convenience, or to gratify a temporary spite, is an injury to the whole world, which the whole world ought to prohibit and to punish.

The Congress which made the treaty of Paris proposed a still greater improvement in international law. By the twenty-third of their protocols on the motion of Lord Clarendon, they express,

in the name of their governments, the wish that states between which any serious misunderstandings may arise should, before

appealing to arms, have recourse, as far as circumstances may allow, to the good offices of a friendly power. And they hope that the governments not represented in the Congress will unite in the sentiment which has inspired the wish recorded in the protocol.

If this 'wish' could be drawn out into a regular treaty or system of treaties—if it could be rendered binding by mutual engagements of the choice of the umpire—if the preparation of the reference could be prearranged—thi would be the most important of all the modern improvements in international law. Nations are now in what has been called the state of nature, but is, in fact, the state of savages, who acknowledge a few usages, but break them whenever their passions impel them. Such an arrangement would raise them into a civilised society. There would be a real Law of Nations.

Unhappily it was a wish, not an engagement.

On the first occasion for its application, the case of the Cagliari, the British and Sardinian governments were ready to comply with it.

But as soon as the French government was engaged in a dispute with one of the weakest of the European kingdoms, it peremptorily, almost contemptuously, refused to submit to a reference. I allude, of course, to the Charles et Georges. In this case a French vessel was hovering off the port of Conducia in the Portuguese colony of Mozambique. She was suspected of being a slaver, and warned off.

In a few days she was there again, was searched by a

Portuguese ship of war, found to be equipped as a slaver, to have 110 negroes on board (most of them old men or children), and water and provisions for about 200 more. The French captain affirmed that they were voluntary emigrants—the negroes that they had been kidnapped, and sold against their will to the French captain.

Under such circumstances she was taken into the Portuguese port of Mozambique, tried, and condemned as a slaver. The captain appealed to the superior court at Lisbon, and the ship was sent thither for adjudication. The French government required the proceedings to be stopped, and the ship to be released. The Portuguese government expressed their regret at their inability to comply with the wish of the French government, the case being in the hands of the Court of Relazão, to which the captain himself had appealed; and the court being by the constitution independent, and subject to no authority capable of withdrawing a case from it.* The French repeated their demand, on two grounds:—First, that the Comité des Contentieux—a department of the French Foreign Office, to whom the case had been referred—had carefully examined it, and had decided against the Portuguese government;† and, secondly, that the presence of a French officer on board of the 'Charles et Georges' must, however suspicious the appearances might be, be taken as conclusive evidence that she was not a slaver.‡

I found (says Lord Cowley) the Emperor's minister very much

* Correspondence on the 'Charles et Georges,' 1859, p. 15.

† Ibid. p. 39. ‡ Ibid. p. 52.

out of temper. He told me that France would not admit the right of visiting a French vessel on board of which there was an imperial delegate; that the presence of that delegate afforded a sufficient guarantee that there was no question of slave-trading.

France wishes to establish, as a principle of her maritime law, that when once a French vessel has on board an official delegate, to watch over the operations of such vessel, no appeal can be had against any infractions committed by such vessel except to the Imperial government itself.*

As a last resource, the Portuguese government proposed, and the English government urged, a reference, in the terms of the treaty of Paris. This was peremptorily refused.

Count Walewski (writes Lord Cowley) said that the declaration contained in the twenty-third protocol of that treaty was the simple expression of a wish; that the proposal of an amicable mediation had not been slightly rejected, and that it had been matter of great concern to the Imperial government when they found themselves, under the circumstances of the case, precluded from agreeing to it.†

The peculiar circumstances of the case appear to have been—first, that so weak a power as Portugal could be oppressed with impunity; and, secondly, that an impartial referee would, as the French obviously felt, have decided in favour of Portugal.

A French fleet entered the Tagus, and the 'Charles et Georges' was released.

Little alteration in the laws of war on land has occurred since 1842. In Europe the practice has become more

* Correspondence on the 'Charles et Georges,' 1859, p. 53. † Ibid. p. 70.

humane. During the Russian war, England and France refused to injure Odessa, though it was at the mercy of their fleets, and though it gave great assistance to the Russian armies. In America the practice seems to have become more barbarous. In the previous essay I have given a few specimens of the conduct of the American troops during the Mexican war: such atrocities have not been committed in Europe since the seventeenth century.

CHAPTER III.

POLITICAL PHILOSOPHY.*

By Henry Lord Brougham.

THIS work was published, as may be seen by the dates, at successive periods. On the appearance of the first number, we expressed our satisfaction at a beginning being made to supply a great deficiency in our political literature; and we promised to examine and report on the whole work when it should be concluded. If any apology for our not having sooner performed this promise be due, either to the public or to the distinguished author, it is to be found partly in the great extent and difficulty of the subject, and partly in the manner in which he has treated it.

The influence on human affairs of different forms of government may be considered historically, theoretically, or practically; or, in other words, may be made the subject of a history, a science, or an art. The writer may describe the nature, and relate the origin, the growth, and the fate of the principal political constitutions which have actually existed. He may tell the causes—some the result of design, but more of accident—through which the early

* From the Edinburgh Review, January 1845.

simple governments, in some cases, were preserved unaltered; in others were changed from one pure form into another; and in others became mixed. He may show how the mixed forms gradually grew more and more complicated, until at length the system of divided powers, of balances, and of checks, became unmanageable; and the machine, unfit to resist attack, or perhaps even to bear the friction of its own ordinary working, was broken up by foreign conquest or by revolution. This is the historical treatment of the subject.

Or, instead of relating what has existed, he may show what is capable of existing. He may explain the different modes in which the supreme power may be distributed or collected, the effects which it is the tendency of each form to produce, and the modifications to which that tendency is subject from intrinsic and extrinsic accidents—from the intrinsic influence of race, religion, climate, and situation, and from the extrinsic action of one nation upon another. This is the scientific treatment.

Or, lastly, assuming that those who have the power of creating or altering the constitution of a nation have some given end in view—its power, its wealth, its freedom, its tranquillity, or its intelligence—he may show what is the constitution under which, in any particular case, any one or more of these objects is most likely to be effected, what are the incidental sacrifices, and how these sacrifices may be diminished. This may be called practical politics, or the *art*—as distinguished from the *science* and the *history*—of government.

Whichever of these three modes of treating the vast subject of government were adopted, it could not be considered adequately except at great length. Lord Brougham has united them, and has therefore been forced to compress into one treatise the matter of three. This, of course, has rendered his work more complete in its outline, and less so in its details: and it has also impaired the continuity and cohesion of its parts. It has rendered it more useful as a book, and less perfect as a treatise. It is a sacrifice of artistical merit to utility.

By far the largest portion of the work is purely historical. Of the twenty chapters of the first volume, the last ten are devoted to the history of Monarchy in France, Germany, Italy, Spain, Portugal, Denmark, and Sweden; and the greater part of the remainder is employed in the history of the Asiatic Despotisms, and of the Feudal System. The second volume contains twenty-eight chapters, of which only the first six treat of the nature and consequences of aristocratic government; the remaining twenty-two being histories of the Aristocracies of Poland, Hungary, Rome, Ancient Greece, Modern Italy, and Switzerland. The third volume contains thirty-five chapters, of which the first twenty-one treat of Democracy and mixed government; and the rest contain the constitutional histories of England, the United States, France, Holland, Belgium, and Switzerland. Throughout are dispersed disquisitions as to the influence on human happiness of different administrative institutions, and precepts as to the modes by which they may be best adapted to given political

forms; and frequently, after noticing the defects of existing institutions, the means of remedying them are pointed out.

For this mixture of narrative, of philosophical exposition, and of positive precept, so far as we are merely a part of the public, we are grateful; but as reviewers, we feel that it gives us only a choice of difficulties. Anything like a general view of the whole work would be a condensed and yet meagre abstract; and if we select portions, and give to them their due consideration, a very few will be all to which we can afford any attention.

The historical part we shall not criticise, not certainly because we undervalue it—it is executed with great research and sagacity, and contains many brilliant and clear condensations, many striking comparisons and contrasts, and much valuable criticism, both historical and political—but simply because we have not room for it. From the practical portion we shall select for examination a very few of the most important or the most remarkable passages. Of the scientific portions we shall endeavour to give an outline as full as is consistent, not with the importance of the subject or of the treatise, but with our confined limits.

In the first chapter, Lord Brougham inquires into the origin of civil governments. He disposes summarily but efficiently of the rival theories of original contract, proprietary right, and prescription; and asserts that the rational foundation of all government—the origin of a right to govern, and a correlative duty to obey—is expediency—the general benefit of the community. In the second chapter, after stating the generally admitted

proposition, that in every state there must be a supreme power, an individual or a body possessing authority in itself, legally absolute and uncontrolled, and that this authority may be exercised by acts, either legislative or executive, he proceeds, in the following passages, to give an outline of his subject and to mark its principal divisions :—

There are three great divisions under which governments, where they are of the simple and unmixed form, may be classed, according to the hands in which the supreme power is lodged. It may be vested in a single person, or it may be vested in a particular class different from the bulk of the community, or it may be vested in the community at large. In the first case, the government is called a Monarchy; in the second, an Aristocracy; in the third, a Democracy.

In order that any one of these forms of government should be pure, the supreme power should be vested in one of these three bodies or authorities exclusively, and without any control or check from any other. A Pure or Absolute Monarchy implies that the sovereign should have the whole power, legislative and executive, in his own person. If his power is shared, or if his functions are exercised subject to any control or check, the government is no longer purely monarchical, but in some degree mixed. In like manner, if the Aristocracy shares its authority with the people at large, or allows any check over its operations to the people at large, or to any individual functionary *over whose creation it has no control*, the government is no longer a Pure but a Mixed Aristocracy—and so of a Democracy.

It must, however, be kept in mind, that in order to detract from the purity of any of these forms, the supreme power itself must be actually divided, and not merely an arrangement made voluntarily by the party having the supreme power, and which only subsists during that party's pleasure.

In a Monarchy, the choice by the sovereign of a council to aid him in his office, or to exercise a portion of his power, does not detract from his power, and does not render the government a

mixed one. So, if the sovereign can do whatever he pleases, except that the judges of his own nomination act for life—in other words, if all he is prevented from doing is judging causes in his own person—if he is independent of all other control in his legislative and executive functions, and only restrained by being obliged to judge through persons of his own nomination, even if these are named by him for life—we call it an Absolute and not a Mixed Monarchy. The limitations arising from this judicial arrangement are plainly little more than nominal, because he may choose such tools as he can rely upon, and has no one to control or watch his choice.

Again, the purity of the Democratic form is not diminished by arrangements made for the purpose of enabling a people inhabiting an extensive territory to administer its own affairs. It may delegate for this purpose the legislative, the executive, and the judicial power to individuals as to bodies; it may be satisfied that these should be vested in certain portions of the community, and none remain in the nation at large, except the choice of those ruling portions; and still the government is purely democratic, and not at all mixed, because no body or individual exists in the community having power independent of the people—and because the people have not shared their own power with others over whom they have no control, but only deputed others to exercise their authority.*

We doubt whether Lord Brougham adopts a convenient nomenclature, when he applies the epithet 'pure' to a monarchy in which there are irremovable functionaries, or to a democracy in which the people act through representatives. How can an absolute monarch be *prevented* from judging causes in his own person? How can he be *obliged* to allow the judges whom he finds, or whom he has nominated, to retain their offices for life? The power that restrains or coerces him must at least be equal to his own;

* Vol. i. pp. 73–77.

and in that case he is not, in fact, absolute—the constitution is not a pure monarchy. Again, if the people at large have retained, or rather have proposed to retain, no power but that of electing legislative and executive functionaries, it is clear that they hold that power merely at the will of those whom they have elected. The legislative body elected for three years may pass a law that it shall sit for seven, or that it shall sit so long as it pleases, or that it shall be elected by only a portion of the people, or that it shall appoint its own successors, or that its powers shall be hereditary.

If it be answered that it would not venture to do so, the reply is, that the fear of resistance operates as a practical check on all governments whatsoever. Even in the purest democracy, the majority is controlled by the fear of provoking the resistance of the minority. But we have seen that there must exist, in every state, a supreme power uncontrolled by law. We are now enquiring as to the modes in which this supreme power may be distributed or collected; and for the purposes of this enquiry, the question always is what the individuals, or the bodies possessing a portion of this power, legally *can* do—not what they are *likely* to do; their ἐξουσια, not their δυναμις. Even if we suppose the delegation of legislative power to be partial as well as temporary—if we suppose that the people at large retains exclusively to itself not merely the right of election, but also the power of altering the more important parts of the constitution (as is the case in the United States)—can it be maintained that the constitution

remains equally democratic, whatever be the period for which that partial delegation is made? Can it be said, that if in one country the legislative and executive functionaries are elected for life, in another for twenty years, in another for ten, and in another every six months, the management of affairs in each country equally depends on the will of the people? And if the delegation of power for twenty years impair the purity of the democratic principle, so must, pro tanto, its delegation for six months, or for one month.

Lord Brougham admits, that if an aristocracy allows any check on its proceedings to an individual functionary, *over whose creatures it has no control*, it is no longer a pure aristocracy. But if that check be effectual, it is pro tanto an introduction of the monarchical principle, even though the individual functionary be created by the aristocratic body. If, in a purely aristocratic government, the aristocratic body make a law appointing a president for life, and requiring his concurrence in all subsequent legislation, the government is from that instant partly monarchical. The will of an individual can now control that of the whole community. Like the horse in the fable, the community has taken a bit into its mouth and a rider on its back. And the effect is the same in kind, though not in degree, whether the president be appointed for life, or for ten years, or for a month—whether he have an absolute or only a suspensive veto.

The result is that, to obtain a precise nomenclature, we must confine the term 'pure monarchy' to the form of

government in which an individual is legally omnipotent—the term 'pure aristocracy' to the form which allows no legal resistance to the will of the select body—and the term 'democracy' to the form in which there is nothing to suspend or to impede the action of the will of the bulk of the community.

It follows also that the only form which is frequently found pure is monarchy. There are few aristocracies without a doge, or a president, exercising a temporary but real control. Still more rare is a pure democracy. It is impossible in any state which is not small enough to enable all the inhabitants to attend the place of meeting; and even where there are no physical objections, the moral ones are generally sufficient to exclude it.

The majority of the forms adopted by the civilised world do not belong exclusively to either of these classes, but admit the elements of all. They are not monarchies, aristocracies, or democracies, but mixed forms, in which it is often difficult to say whether the monarchical, the aristocratic, or the democratic element prevails.

It may be advisable, however, to state more fully what we mean by each of these elements.

The monarchical element requires little further explanation. It consists, as we have already remarked, in the subservience of the will of the whole community to that of an individual. It is not essential to monarchical power that this subservience should be universal, or even general: it is not essential even that the individual should have the power to command. If there be any acts in which his

concurrence is necessary, and there be no authority that can legally force him to concur, his power to prevent is, for many purposes, a power to act, just as a power to forbid is often equivalent to a power to command. It is, however, essential that he should form a part of the legislative body, not merely as a member, but as an independent branch—or, in other words, that he should have a veto, permanent or suspensive. If he have not, his opposition may at any time be legally got rid of, either by a law, or by an arbitrary executory act. The President of the United States, therefore, has monarchical power: he can resist and, indeed, often has resisted the will of the community. The Doge of Venice had not: in his highest functions he was only a member of a council, unable to oppose the will of the majority.

The aristocratic element consists in the possession of legislative power by a small body of persons.

The democratic element consists in its possession, directly or indirectly, by a large number of persons.

These definitions are obviously vague. The excuse is, that the ideas which they express are vague. If we were to define the aristocratic element as the influence of a minority, the democratic element as the influence of a majority of the people, almost all the institutions which are usually called democratic must be called aristocratic. The only legal share in the government of France possessed by the people consists in their right to elect the Chamber of Deputies. This is always held to be the democratic portion of the French constitution. But out of the thirty-

four million inhabitants of France, not more than two hundred thousand are electors. Without doubt the democratic element would be increased if the franchise were extended. But that the difference between the aristocratic and democratic elements consists rather in the positive number of the persons admitted to power, than in the proportional numbers of those admitted and excluded, will become evident, if we consider what would be the effect if the inhabitants of France were diminished, but the proportions of electors and non-electors preserved. If France contained only three hundred and forty thousand persons, of whom two thousand elected a legislative body, the institution would be aristocratic. On the other hand, if the British House of Commons were elected by the householders of the metropolis, it would still be a democratic, not an aristocratic institution, although the metropolitan householders constitute a small minority of the inhabitants of the British islands. The Ecclesia of Athens was a democratic assembly, though out of the four hundred thousand inhabitants of Attica, not twenty-five thousand had a right to vote.

So far as the conduct of a body depends on their number, it must depend on their positive number, not on the proportion which that number bears to the number of some other class of persons. If that number be very large, it is subject to the contagion with which fear and hope, love and hatred—in short, all the passions—are propagated from mind to mind, and exaggerated as they are diffused. It is more generous and more cruel—more sanguine and

more desponding—more rash and more easily frightened—more ready to undertake and more ready to abandon what it has undertaken—more confiding and more suspicious—more prone to erect idols and more prone to break them—than would be the case with the individuals composing it, if they had to feel and to think and to act separately. It is likely, as its number increases, to contain a larger proportion of ignorant, violent, and uncultivated persons. It is likely, in short, to possess the qualities—some noble, but most of them dangerous, hateful, or contemptible—which belong to a mob. On the other hand, in proportion as the number is small, it is likely to be cool, selfish, and unimpassioned; to allow its perseverance to run into obstinacy and its caution into timidity; to be tenacious of old impressions and unsusceptible of new ones; to be steady in its sympathies and in its antipathies; to be sparing of reward and unrelenting in punishment; to be permanently grateful and permanently unforgiving; to be marked, in short, by the austere, respectable, but somewhat unattractive character which we associate with the name of a senate.

We have followed Lord Brougham in applying the term 'aristocratic' to the legislative influence of a small number of persons; but we should have preferred, if usage had permitted it, the term 'oligarchical.' The word 'oligarchy' is univocal, and is associated with no idea except that which it expresses. The word 'aristocracy' is often used to express mere excellence, without any reference to power—as when we talk of the aristocracy of

talent or the aristocracy of learning. Derivatively, it means either the government of the best members of the society, or, according to Aristotle,* a government *πρός τὸ ἄριστον τῇ πόλει*—a government which endeavours to promote the welfare of the community, or the objects in the attainment of which the community thinks that its welfare consists. It has almost every defect, therefore, which an appellative can have. It is equivocal, it is associated with an extraneous idea, and its derivative meaning differs from both its received meanings. Its use, however—to express government by a few—is so established, that we think it, on the whole, best to retain it.

In the remainder of the first volume, Lord Brougham treats of pure or absolute monarchy—that is, of the form of government in which there is no legal restraint whatever on the will of the reigning individual. He divides pure monarchy into Oriental or despotic, and European or constitutional. In each, the monarch is absolute—in neither is there any direct legal check to his will; in each, therefore, the checks are indirect. But in the former the only indirect checks are religious opinions, and the fear of resistance: in the latter, to these checks are added habits and feelings among the people, the results of a former prevalence of the aristocratic or democratic principle, now obsolete or abolished, and institutions which the monarch, though he has legally the power to destroy them, does not venture actually to destroy.

* Pol. lib. iii. cap. vii.

We doubt the convenience of this distinction. It is a distinction founded on the nature, not of the forms of government in question, but of the people who are subject to them. It is like the distinction drawn by Aristotle between *βασιλεια* and *τυραννις*—the former being the absolute rule of one for the good of all, the latter, the absolute rule of one for his own benefit. Under the Antonines, as well as under Commodus, the Roman constitution was expressed by the maxim, *Quod principi placuit legis habet vigorem*; so, in Denmark as well as in Turkey, the will of the reigning individual cannot be legally opposed. The accidental circumstances, that the personal character of the monarch induced the Antonines to exercise their will beneficially, and Commodus to exercise his will mischievously, and that the character of the people, and the situation of the country, lead the despot, whatever be his personal character, to act very differently in Turkey and in Denmark, have nothing to do with the question, What is the form of government?

We think that the best mode of treating the subject would have been to consider pure monarchy, whether European or Oriental, as the same form of government, modified in its effects by the character of the people over whom it is exercised.

Lord Brougham's statement of the effects of absolute monarchy, when the state of society is favourable to their unmitigated development, is, as might be expected, eloquent and full. He describes the people as brutalised by fear, the despot by dominion, and all improvement as

arrested by the jealousy of power. He enquires, whether pure monarchy have any redeeming qualities, and, with the single exception of a promptitude of decision and action, denies that it has any. But these he treats as doubtful merits, generally balanced by evils of the same kind with the advantages; promptitude of decision being often precipitate, and promptitude of action being impaired by want of means, occasioned partly by the deteriorating effects of despotism, and partly by its inability to call forth rapidly and fully the resources, such as they are, of its subjects. He does not exempt from his censure the influence of despotism even on the foreign concerns of a nation—its intercourse with other states, its treaties and alliances, on the maintenance of peace, or the prosecution of war.

To go no further (he says) than the tendency of such governments towards war at all times, if in every other respect they were faultless, this would be their condemnation. War is emphatically the game of kings, and they will always love it, and, if absolute, will never cease to play at it, until the exhausted resources of their states, the fear of revolt, or the danger of being conquered, force them into quiet.*

That the monarchs who govern barbarous nations are prone to war, is true; and so are the rulers, and indeed the people in barbarous nations, whatever be the form of government. Uncivilised man is a beast of prey. The early history of every nation, democratic, aristocratic, or monarchical, is perpetual war. But when Lord Brougham attributes a peculiar tendency towards war to the monarchical principle—when he maintains that when a single

* Vol. i. p. 151.

individual has to decide on peace or war, he is more likely than an aristocratic body or a popular assembly to decide for war—we dissent from him.

What are the results of experience? Are the modern European nations pacific in proportion to their freedom? Is the peace of the world more endangered by Austria or by Prussia than by France or by England? Have democratic institutions produced peace in America?

The motives to war are two—ambition and vanity. The one shows itself in the desire of an extension of territory or of influence; the other in the desire to acquire glory or avenge insult. The English people are free from ambition; perhaps they are the only great people that ever has been so. An English writer naturally associates the unambitious with the popular character of the government, and supposes that the former quality is the result of the latter. But the government of France is as democratic as that of England, perhaps more so, and yet she is absolutely mad with ambition. Nor is this peculiar to the present time. In proportion as the people of France have been able to influence their government, they have forced it on wars of conquest. The unprovoked conquest of Savoy was one of the first acts of the Convention; it was immediately followed by the incorporation of Belgium and the subjection of Holland. The conquests of Napoleon seduced the French to endure his oppressions, and make them now idolise his memory. The pacific policy of the Restoration was the great obstacle to its popularity. In the hope of pleasing the people, the government

perpetrated the wanton invasion of Spain, and the experiment was successful. No sooner did the Revolution of 1830 lead the people to believe their influence supreme, than they demanded war and conquest, the boundary of the Rhine and the retention of Algiers. Even within the last year, the government obtained some popularity by engaging in war with Morocco, and lost it again by dictating a triumphant but reasonable peace. That France is not now at open war in any part of the globe except Africa—that in Europe she is incurring only that portion of the evils of war which consists in the waste of the national resources on fortifications, armies, and fleets, and the discouragement of industry and commerce by the doubtfulness of the future—is altogether owing to the prevalence in her councils of the monarchical over the democratic principle.

If there be any portion of the world in which the desire of conquest is peculiarly irrational it is America, where a population not exceeding that of France is scattered over a country more than four times as large as Europe; and yet, throughout that hemisphere, ambition has been the curse of every state in which the influence of the people has become dominant. The democracy of the United States bullied Spain out of Louisiana, bullied Mexico out of Texas, rose en masse along their northern frontier in the hope of seizing the Canadas, and is now ready for war, in the hope of appropriating the Oregon country, two thousand miles from their own back settlements. As for the southern republics, no sooner had they freed themselves

from the monarchical influence of Spain and Portugal than they began to fight with one another for frontiers; and that in a country where the great evils are the paucity of people and the extent of territory.

If popular governments are prone to wars of ambition, still more are they to those of vanity. Let any practical diplomatist say, whether it be easier to induce a minister who represents the will of an absolute monarch, or one who depends on the majority of a popular assembly, to repair or even to confess a wrong, or to accept equitable terms of satisfaction or compromise. The reasons for this are numerous, and, we fear, not likely to be removed or even weakened.

In the first place, the scenery which covers the negotiations between monarchs saves their vanity. A concession is easily made where its only real evil depends on its publicity, and that publicity can be prevented. A victory is of little value when it is recorded only in the archives of a state-paper office. A popular government lives in the face of day, and has to apologise to its own subjects for every act of prudence or of justice.

In the second place, an individual can generally be forced to hear both sides of the question. There are few disputes in which each party is not in some degree in the wrong, or in which he can avoid perceiving that he is so, if once he be compelled to give a deliberate attention to all his opponent's arguments. The instant that this discovery has been mutually made, if there be no *mala fides*—that is to say, if the controversy arise not from

ambition but from vanity, if it be the cause of quarrel, not its mere pretext—an accommodation is almost inevitable. A nation does not listen to reason. It cannot be forced to study both sides of the question, and never does so voluntarily. It reads only its own state papers, its own newspapers, and its own pamphlets; it hears only its own speakers, it accepts all their statements of facts and of law; and holding itself to be obviously and notoriously right on every point, believes that it would be dishonoured in the face of all Europe by the slightest concession.

Again, every popular government is infested by faction. It always contains one party, sometimes more than one, whose great, and sometimes whose principal, object is the subversion of the existing ministry. The foreign policy of a ministry is generally its most vulnerable point. It is the subject about which the mass of the people always understand least, and sometimes feel most. If a minister be bold, the Opposition halloo him on to make extravagant demands, in the hope that he may be entangled by war or disgraced by retreat; if he be prudent, they accuse him of sacrificing the interests or the honour of the country, of surrendering to foreign ambition or quailing before foreign insolence.

And, lastly, there is in every nation in which the democratic element prevails, an important power whose immediate interests are opposed to peace, external as well as internal, and that is the daily press. A newspaper lives on events. It lives by taking of those events the view that agrees best with the passions and prejudices of the

people. It pleases them best by stimulating their pride, their vanity, their resentment, and their antipathies. It is the demagogue of a nation of readers; and, like other demagogues, is generally popular in proportion to the violence and the mischievousness of its counsels.

It is true that an undue tendency to war, or at least an insufficient dread of its evils, is frequent in every government—whether the monarchical, the aristocratic, or the democratic principle prevail; but so far from believing that this defect belongs peculiarly to monarchical government, we believe that form of government to be, on the whole, less subject to it than any other, except perhaps a pure aristocracy.

We now proceed to consider the other of the two branches with which Lord Brougham has subdivided pure monarchies, namely, the monarchies which he terms constitutional—those in which the authority of the sovereign, though legally unfettered, is moderated by popular habits or feelings, the relics of lost privileges, or by institutions which he cannot venture to abolish. Of these institutions the most important is an hereditary nobility. Lord Brougham treats it as the test which distinguishes constitutional monarchy from pure despotism.

We extract from Lord Brougham's statement of the effects peculiar to this form of government the small portion for which we have room:

A monarchy is naturally extravagant; it is splendid and it is expensive; it is reckless of the general suffering from the burdens of taxation; and it is prone to consider only the interests and

enjoyments of courts and persons in authority. A richly endowed hierarchy—numerous governments of towns and provinces—a large military staff—in maritime countries expensive colonies—must all be kept up to provide for the nobles and their families, and their followers.

The maintenance of a standing army, numerous, expensive, and well disciplined, is another charge upon all monarchies. Large armies are incompatible with the genius, almost with the existence, of a commonwealth. With the institutions of a pure monarchy they square perfectly—they are in complete harmony with its spirit.

The whole arrangements of the state are modelled upon the monarchical footing. In a country where the public are wholly excluded from the administration of state affairs, they cannot safely be admitted to manage even their own local interests, because the habit of acting in these would inevitably beget the desire to interfere in the affairs of the community at large.

The influence of the monarchical principle, but especially when combined with aristocracy, as in European monarchies it ever must be, tends to the establishment of a division of property, not very wholesome for public liberty, or for the character of the people, though attended with some redeeming consequences:—we allude to the rule of primogeniture. The law of entail is the abuse of the law of primogeniture; and their consequences are prejudicial to the happiness of families, as well as to the wealth and commerce of the country.

The will of the court and upper classes becomes the law, and their habits the example for all. Court favour and the countenance of nobles are the objects of universal pursuit. No spirit of free speech or free action can be said anywhere to exist. Among the upper classes, those who are brought into immediate contact with power, fear prevails almost as much as in pure despotisms. The alarms, the suspicions, the precautions, prevalent in the society of the superior classes in Italy and Germany, are almost equal to any which can be observed in the courts of the East.

The vigour of the monarchical government, both at home and

abroad, is the quality most boasted of by its admirers; and to this it can lay claim from the unity of its councils, and the undivided force which it brings to their execution. But there is one virtue which this constitution and all monarchy possesses beyond any other—the fixed order of succession by inheritance. In this respect it excels both despotisms and commonwealths. The former are constantly subject to revolution and violence; the latter are unstable from opposite causes; but monarchies, established by law and accompanied with regular institutions, have the hereditary principle of succession in perfection. That this rule leads to great occasional mischiefs there can be no doubt. Nevertheless, the dangers which are sure to result from suffering the place of chief magistrate to be played for by intriguing, or fought for by ambitious men, are so formidable as to make reflecting persons overlook all lesser risks in the apprehension, in the worst of calamities, civil war. This is the redeeming quality of monarchy; it is far enough from leaving the question all one way, but upon the balance it gives a great gain.*

We have already remarked that pure democracy is impossible in any other country larger than an ordinary English parish; and there is no case in Europe, modern or ancient, in which any nation on the scale of the great European monarchies has adopted enough either of the aristocratic or of the democratic principle to entitle its form of a government to be described as an aristocracy or as a democracy, and has retained that form for a period sufficient to enable us to estimate its permanent effects. The modern American States, indeed, are essentially democratic; but the situation of the United States, without a formidable neighbour, is too peculiar; and the independence of the others is too recent to allow them to be used as fair objects of comparison.

* Vol. i. pp. 357–363.

It is impossible, therefore, to infer from actual experiences whether, if thirty, or twenty, or ten millions of persons constituted one nation, with a government essentially aristocratic or essentially democratic, and surrounded by other powerful states, that government would have a less tendency to extravagance, to the maintenance of large standing armies, to centralisation, or to primogeniture, than is now the case with Austria or Prussia. As direct proof is unattainable, we will enquire into the results, on each point, of analogical reasoning.

First, as to extravagance. The mixed governments of Europe, those which are distinguished from its absolute monarchies by a strong infusion of the aristocratic or democratic element, are in general also distinguished by their greater public expenditure. The expenses of the Danish, the Prussian, or even the Austrian court, are insignificant, compared with those of the courts of England or France; or, indeed, if the extent of territory or population be compared, of Holland. The amount of the annual taxation compared with the population is more than three times as great in each of the three mixed governments as it is in any of the three absolute governments.

There is, indeed, one great source of expense in mixed governments from which absolute governments are comparatively free—the creation of offices for the sake of patronage. An absolute monarch can give money, and that is always the cheapest way of rewarding or buying. In a mixed government, a place is created or retained, duties

are attached to it—generally useless, often mischievous; still, as they are troublesome, they must be remunerated, and a claimant who would have been satisfied with 100*l.* a year as a pension, must have 300*l.* on the condition of residence and employment. It is thus that England retains its three hundred Ecclesiastical Courts. Everyone admits that two hundred and ninety-nine of them are instruments for the creation of trouble, delay, and expense. An absolute government would sweep them away by a decree of ten lines. Every year the mixed government of England attacks them, and is repulsed.

Second, the amount of the standing army of a nation seems to depend little on the form of its government. The largest in proportion to its population is that of Holland; the next is that of France; the smallest is that of China. When Spain and Portugal were absolute monarchies, their standing armies were trifling, and so are those of most of the Italian monarchies. Ireland, with eight millions of people, requires a standing army more than twice as large as is necessary in Great Britain, with a population of above twenty-one millions.

Third—again, with respect to centralisation. France, under a mixed government, is incomparably more centralised than she was under an absolute monarch. The local administration of Spain under her absolute kings was almost democratic. So was that of Norway, when she formed part of the absolute monarchy of Denmark. So is that of India, though she has been ruled by absolute monarchs for twenty-five centuries. An Indian village

scarcely knows the existence of its monarch except through its revenue officers. The fortunes and lives of the inhabitants are at his mercy; but while his taxes are paid, he abstains from all interference. The tendency of the British government is at once towards democracy and centralisation; and every advance towards the former is generally accompanied by a much greater advance towards the latter. So far from believing that the exclusion of the people from political power is likely to exclude them from the management of their local interests, we are inclined to think that an absolute government, partly to avoid trouble, partly to avoid expense, and still more from carelessness, is more likely than any other to abandon to the parishioners what it considers the trifling matters of the parish.

Fourth, primogeniture is natural only in a peculiar state of society, that in which the possession of land gives political power, proportioned in some measure to its extent or value; and even then seldom exists except among the owners of land. It is essentially an aristocratic custom. In Oriental despotisms, therefore, where the land is generally the property of the sovereign, it is unknown. It is rare in the United States of America, except in the Southern States, where a proprietor can vote for his slaves. It is rare in the British islands, except among the high landed aristocracy. No man with a fortune consisting of 20,000*l.* in the funds, or even of a landed estate worth only 20,000*l.*, thinks of making an eldest son. Even if it were lawful in France, it probably would be uncommon. The aristocratic element is so weak in France, that the

slight amount of political power which a man could secure to his son by leaving to him his whole property would seldom be sufficient to conquer his natural feelings of parental justice. The prevalence of primogeniture in the absolute European monarchies arises from the former prevalence among them all of the aristocratic element. The monarchs have always endeavoured to restrain it. In England, perpetual entails were abolished by the Tudors, the race under whom the monarchical element was strongest. In Scotland, where the aristocratic element has always been more powerful than in any other part of the British islands, a larger proportion of the land is subject to perpetual primogeniture than in any other country in Europe, except perhaps some parts of Germany.

We cannot think, therefore, that either extravagance, standing armies, centralisation, or primogeniture, flow naturally from the monarchical principle. And we must add that, even if we thought monarchy peculiarly favourable to these three latter institutions, we should not treat that tendency as necessarily a vice. Standing armies, indeed, may be too large, and centralisation may be excessive; and such is generally the case on the continent of Europe. But they each may be deficient. The standing army of America is insufficient to keep her at peace at home or abroad, to prevent her inhabitants from injuring one another, or from attacking her neighbours. The local authorities of England are the seats of ignorance, selfishness, jobbing, corruption, and often of oppression. Every diminution of their power has been an improvement; and,

if we had room, we could show that the case is the same as to primogeniture. Both the power to entail, and the wish to exercise it, may certainly be excessive, as we think they both are in Scotland and in Germany; but both or either of them may be deficient, as we think they both are in France and in Hindostan.

We agree with Lord Brougham that the influence of absolute monarchy, even when tempered by European civilisation, is unfavourable to the character of its subjects. We agree with him that it is destructive of free action, and, to a certain degree, of free speech, and that it impairs most of the manly and independent virtues. We do not believe that 'the alarms, the suspicions, and the precautions prevalent in the society of the superior classes in Italy and Germany, are almost equal to any which can be observed in the courts of the East.' That where every man of eminence is conscious that he hates the existing government, and is anxious to subvert it, he should be always on his guard against betraying his feelings and his wishes to the distributors of punishment and favour—and that the government itself, knowing that all the ground beneath it is mined, should be always on the watch for an explosion—all this is inevitable in countries which have been recently the scenes of revolutionary movement; or in which the sovereign owes his power to conquest, or to foreign support, or to promises treacherously evaded or shamelessly broken. But this state of mutual alarm, suspicion, and precaution, is not a necessary incident to the absolute European monarchies. It does not exist in

Prussia, or in Denmark, or in the German provinces of Austria, or in fact in any portion of Europe, except parts of Russia, Poland, and Italy. On political subjects, without doubt, there is less freedom of speech in Vienna or in Berlin than in Edinburgh or in London; but there are other subjects on which there is much more; and we believe that it would be much safer to talk Chartism in Naples than Abolition in New Orleans.

We fear that we shall be thought paradoxical if we suggest some doubts as to the superiority which Lord Brougham ascribes to the principle of succession over that of election in absolute monarchies.

In limited monarchies, where the King reigns but does not govern—where he has only to accept the ministers who can obtain a parliamentary majority, to sign whatever they lay before him, and to receive their resignations when they find it necessary to retire—there is scarcely any drawback to the advantages of hereditary succession. The sovereign's great office is to be a keystone, merely to fill space—to occupy the supreme station, in order to keep others out of it. He may be—perhaps it is better that he should be—the person in his kingdom who knows least, and cares least, about politics. His personal character is comparatively unimportant. We say comparatively; because, even in the most limited monarchy, the social influence of the sovereign for good or for evil is considerable. His habits and tastes are always matters of notoriety, and often of imitation. Access to his society is always coveted. He may give that access in a manner useful, or mischievous, or

absolutely indifferent. He may call to his court those who are most distinguished by genius or by knowledge; or those whose only merit is their birth or their station; or parasites, buffoons, or profligates. Even in the appointment of ministers, he may sometimes exercise a sort of selection. He is sometimes able to delay for a short period the fall of those whom he likes, and the accession of those whom he dislikes; and he can sometimes permanently exclude an individual. But even these powers he can seldom exercise unless in a state of balanced parties. If one party have a decided ascendancy in the legislative assemblies, and in the constituencies, the limited sovereign is little more than a phantom; and there can be no doubt that it is better that a phantom should be hereditary.

An absolute king always is, or ought to be, a substance. Supposing such a monarch to covet the leisure, the quiet, and the irresponsibility of a limited king—to desire that the fittest persons should be his ministers, and manage public affairs without his interference—how is he to discover who are the fittest persons? How is he to avoid appointing or retaining persons positively unfit? He has no parliament to direct his choice—no opposition to expose the errors of those whom he has chosen; he cannot mix in society, and hear the independent voice of public opinion. Even the press gives him little assistance; first, because a free press probably cannot exist—certainly never does exist—in an absolute monarchy; and, secondly, because the press is never a well-informed, an impartial,

or even an incorrupt adviser. A king governed by newspapers would resemble a judge who should allow himself to be influenced by anonymous letters. There is one mode, and only one mode, by which he can satisfy himself that his ministers are fit for their office; and that is, by giving up his scheme of non-interference, and performing himself a great part of their functions. Every absolute king who is an honest man, must be in constant communication with the heads of every department; he must take part in every council; he must exercise his own judgment on every important measure; he must, in short, be the chief of his own cabinet. But if the exercise of the art of government—the most important, the most complicated, and the most difficult of arts—the art which requires most knowledge, most intellect, and most virtue—is advisedly to be thrown upon a person appointed by accident, and, as Lord Brougham has well remarked, probably rendered by education even less fit than he was by nature, some vast advantage must counterbalance these enormous evils.

Lord Brougham finds this advantage in a diminution of the chances of civil war. But does this advantage really exist? If Europe possessed a universal, a well known, and an unalterable law of hereditary royal succession, and if the facts calling that law into operation were always certain and always notorious, so that, on the decease of a king, there never could be a doubt as to his legitimate successor, we should have what Lord Brougham terms 'the hereditary principle of succession in perfection.' But

it is obvious that such a law does not exist, and cannot exist. In some absolute monarchies, the law of succession excludes females; in others it excludes foreigners; in all it excludes bastards; and in all it necessarily can be altered by the reigning monarch. If the Salic be the existing law, and the monarch has only daughters, he abolishes it, like Ferdinand VII. of Spain. If it admit females, and the reigning monarch wishes to exclude them, he abolishes it, and introduces the Salic law, like Philip V. of Spain. In each case a civil war is probable. If he have no issue, he adopts; if his issue be illegitimate, he legitimatises it. Even if it be legitimate, its legitimacy may be contested, and the peace of the kingdom may depend on a mixed question of law and fact, in which every element of the decision may be doubtful.

The children of kings generally make royal marriages, and the party who ascends, or becomes likely to ascend, a foreign throne is generally required, before he leaves his own country, to renounce all claims to its succession. Is such a renunciation binding on the renouncing party? Is it binding on his issue? Those who might claim if there had been no renunciation, always maintain that it is not—those who claim against it, that it is; and the consequence is, as in the case of the Spanish succession after Charles II., a complication of foreign and civil war.

Again, most monarchies are composite, and the different parts are subject to different laws of succession. Females succeed in Jutland, and are excluded in Holstein. If the Prince-royal of Denmark should die, as will probably

be the case, without male issue, will the kingdom of Denmark be dismembered? If kept entire, will it be at the expense of civil war? Or will the result be an unopposed usurpation, like the retention of Sardinia and Montserrat, both female fiefs, by the present King of Piedmont, in disregard of the claims of his predecessor's daughter? If we compare the wars of succession, foreign and civil, which have laid waste Europe, between the Norman Conquest and the French Revolution, it will be found that they exceed all other wars put together in number, and still more in duration. A war of succession is the most lasting of wars. The hereditary principle keeps it in perpetual life: a war of election is always short, and never revives.

On the whole, if it were possible to keep an absolute monarchy elective, we should hold that form of government, bad as it is, to be more conducive to the welfare of the people than an absolute hereditary monarchy. It secures the object of monarchy—the management of public affairs by one strong will and one sagacious intellect. No English monarch equalled Cromwell or William III.—no French monarch Napoleon or Louis Philippe. Absolute hereditary monarchy secures nothing—not even, as we have seen, undisputed succession. But, excepting in one peculiar case, no absolute monarchy can remain elective. The monarch has, by supposition, the power to render his throne hereditary; for, if he have not that power, he is not absolute. If he have it he will exercise it. Even Marcus Antoninus delivered the whole civilised world to Commodus. The difficulty was long ago stated

by Aristotle: 'It has been supposed,' he says, 'that a king having the power to make his son his successor may not exercise it. But this cannot be believed. It would be an act of virtue of which human nature is incapable.'*

The exception to which we have referred is that of the Roman Catholic ecclesiastical monarchies. Of these monarchies, so numerous until the end of the last century, we believe that the Papacy alone remains. It is the only one which Lord Brougham has thought worthy of his attention; and yet the others deserve to be mentioned, on account at least of their number and their durability. In Germany alone there were seventy up to the close of the last century. Many were considerable—three were electorates. In many of them the succession of archbishops or bishops, or abbots, or abbesses—for in several of them the ruler was a nun—lasted for more than one thousand years, uninterrupted by foreign violence or by revolution. And yet nothing could be more absurd than the system of election. A man qualified himself for the exercise of the highest legislative and executive functions by renouncing the world, by studies which have no connection with its affairs, by unacquaintance with men and with things. The electoral body consisted in general of persons similarly educated, and so did all the executive functionaries; so that unfitness seemed to be the qualification for office.

These strange governments, however, were not unpopular. It was thought good to live under the crosier.

* Pol. lib. iii. cap. xv.

They were regretted while those who had experienced them lived. The elective sovereign must in general have been a man of some distinction. He had not been spoilt by the early possession or the early prospect of power, and he was often anxious to dignify, by some acts of permanent utility, a dynasty which began and ended with himself.

Omitting, for the reasons already given, the remainder of the first volume as historical, we proceed to the second, which treats of Aristocracy.

Lord Brougham defines aristocracy to be the form of government 'in which the supreme power is in the hands of a portion of the community, and that portion is so constituted, that the rest of the people cannot gain admittance, or can gain admittance only with the consent of the select body.' He does not lay down any ratio of the governing, to the excluded portion of the community, as essential; and as he admits that the exclusion of the Roman Catholics, by the penal laws, did not render the government of Ireland an aristocracy, and that the exclusion of slaves did not render Athens and does not render Virginia aristocratic, it follows that he does not consider a government an aristocracy, although the supreme power is in the hands of a minority *relatively* small, if the number of persons constituting that minority be *positively* great. But it must be admitted that the words of Lord Brougham's definition are more extensive; and so are the words of every definition of aristocracy that we have seen.

* Vol. ii. p. 1.

We believe that the best corrective of the established nomenclature would be, to introduce a cross division, and to divide governments not only into monarchical, aristocratic, and democratic, with reference to the possession of power by one, by few, or by many, but also into *exclusive* and *non-exclusive*, with reference to the admission to power, or exclusion from it, of particular classes. Pure monarchies are, in one sense, the most exclusive, since all power is concentrated in the prince. In another sense they are the least so, since he can delegate, or even transfer it, as he pleases. All other forms are more or less exclusive. Wherever slavery prevails, slaves are excluded from political power. With few exceptions women are excluded. In most governments, persons bound by a foreign allegiance are excluded, though there is now an example in Europe of a person who is a king in one country and a peer in another—who exercises in one supreme legislative and executive authority, and in the other can merely vote and protest. In many countries, all who do not profess a particular form of religion are excluded; in many, all who do not belong to a certain race; in still more, all who do not possess a certain amount of property or income. The representative institutions of France are democratic, but highly exclusive. They are democratic, because they give political power to a very large number of persons. They are exclusive, because they deny that power to a much larger number. The English House of Lords is an aristocratic institution—it gives power to a small number of persons. It is very slightly exclusive, since it is open to all males professing Christianity, and born in the British allegiance.

The most convenient definition of a pure aristocracy then is, the form of government in which the whole legislative power is vested in a small number of persons, without any legal control by the people at large, or by any individual. Such aristocracies are, as Lord Brougham remarks, rare; but as the aristocratic element is widely diffused, it is an important subject of investigation; and the best mode is that which he has adopted, namely, to ascertain the qualities of a pure aristocracy, and thence to infer the influence of the aristocratic element in mixed governments. The vices ascribed by Lord Brougham to aristocracy are, that it places the government in the hands of persons: 1, irresponsible; 2, uninfluenced by public opinion; 3, affected by interests differing from those of the community at large; and, 4, peculiarly unfitted by education for exercising the high functions of their station.

The training (he says) of patricians, next to that of princes, is peculiarly adapted to spoil them. They are born to power and pre-eminence, and they know that, do what they will, they must ever continue to retain it. They see no superiors; their only intercourse is with rivals, or associates, or adherents, and other inferiors. They are pampered by the gifts of fortune in various other shapes. Their industry is confined to the occupations which give play to the bad passions. Intrigue, violence, malignity, revenge, are engendered in the wealthier members of the body and the chiefs of parties. Insolence towards the people, with subserviency to their wealthier brethren, are engendered in the needy—too proud to work, not too proud to beg; mean enough to be the instruments of other men's misdeeds, base enough to add their own.*

* Vol. ii. p. 55.

He adds, that it is the tendency of aristocracy to produce among the people a general dissoluteness of manners, eagerness in the pursuit of wealth, and extravagance in its employment; and

> not only to vex and harass, but to enslave men's minds. They become possessed with exaggerated notions of the importance of the upper classes; they bow to their authority as individuals, not merely as members of the ruling body—transferring the allegiance which the order justly claims, as ruler, to the individuals of whom it is composed; they ape their manners, and affect their society. Hence an end to all independent, manly conduct.*

We regret that the necessity of curtailment has prevented our inserting more of this passage. Much of the great vigour and vividness of the original depends on its developments and illustrations. But we have extracted enough to show its great merit rhetorically as well as philosophically; and it has the additional value of being testimony. The author belongs to the class which he describes—he paints those with whom he lives. But if we examine the picture in detail, it will be found that many of its features belong not to the institution itself, but to the forms which it has most usually assumed, particularly in modern times; or to other institutions with which it is only occasionally and accidentally connected. Thus the distinctness of the interests of the ruling body from those of the community at large, belongs to all governments in proportion, not as they are aristocratic or democratic, but as they are exclusive. It was its exclusive, not its aristocratic character, which occasioned the

* Vol. ii. p. 67.

Protestant government of Ireland to be mischievous. So the slave legislation of the southern Anglo-American states —perhaps the legislation by which the interests of the great majority of the inhabitants of any country have been most cruelly and most shamelessly sacrificed—is the legislation of a government eminently democratic. So Lord Brougham treats as aristocratic the unjust advantages given by British legislation to landowners; but they arise from the exclusive, not from the aristocratic elements in the British constitution—not from power being in the hands of a few, but from almost all who do not possess land being excluded from it.

If we suppose the supreme power to reside in a senate sitting only for life, but itself, as was the case with most of the ancient senates, filling up its vacancies—such an institution would be aristocratic; but, as it would not be necessarily exclusive, it would not necessarily be governed by interests distinct from those of the community at large. Nor would 'the education of the rulers be such as peculiarly to unfit them for worthily exercising the high functions of their station.' This was not true of the Roman senate. It is not true of any aristocracy which is not hereditary. Nor would the tendency of such an aristocracy necessarily be to promote general dissoluteness of manners, self-indulgence, and extravagance; or, on the other hand, rapacity. Indeed, the opposed, but not inconsistent, vices of prodigality and rapacity, seem to belong more to democratic governments, in which wealth is the great source of distinction. No

community is so stained by them as Anglo-America. And, lastly, as it appears that 'insolence, selfishness, and luxurious indulgence' do not necessarily belong to an aristocracy, it is not necessarily subject to the odium which, according to Lord Brougham,* these vices inflict on it.

In fact, nearly all these censures affect not aristocracy but a privileged order—an institution which may exist under any form of government except a pure democracy, and need not possess power legislative or even executive. The noblesse of France, while her monarchs were absolute, had all the qualities which Lord Brougham has described as patrician. It was ill-educated, selfish, and luxurious, born to pre-eminence, insolent to its inferiors and submissive to its master, and became to its fellow-countrymen an object of admiration and of imitation; but, at the same time, of hatred so intense, that the main purpose of French legislation for the last fifty years has been to prevent its re-establishment. But though such an order could not have existed unless it had once possessed political power, yet at the time of which we are speaking that power was gone. All that remained were some traditionary rights, which as soon as they were attempted to be employed melted away. Its immunity from taxation, its social distinctions, its monopoly of the higher military, diplomatic, and household offices, its pensions and its ribands, it owed merely to custom, and to the will of an absolute master that the custom should continue. It was not an aristocracy, or even an aristocratic institution. On

* P. 56.

the other hand, the French Chamber of Peers is an aristocratic institution. It is a small body of persons possessing a portion of the supreme legislative power. But of the six aristocratic defects enumerated by Lord Brougham only the first, the absence of individual responsibility, belongs to it.

Lord Brougham now proceeds to enquire whether the aristocratic institution possesses any virtues to set in opposition to so many imperfections.

There cannot (he says) be any doubt that the quality of firmness and steadiness of purpose belongs peculiarly to an aristocracy. The very vices which we have been considering lead naturally to this virtue, and it is a very great merit in any system of government. A system of administration, a plan of finance, a measure of commercial or agricultural legislation, a project of criminal or other judicial administration, may seem to have failed, yet the patrician body will give it a further trial. They adopted it on mature deliberation, and not on the spur of a passing occasion; they will not be hastily driven from it. Akin to this merit is the slowness with which such a government is induced to adopt any great change. Indeed, resistance to change is peculiarly the characteristic of an aristocracy; and the members of the ruling body and their adherents obtain at all periods, in a greater or less degree, the power of stemming the revolutionary tide. This makes them equally resist improvements; but it tends to steady and poise the political machine. The history of our own House of Lords abounds in examples of these truths. But for their determination to resist measures which they deemed detrimental to the state, or to which they had objections from a regard for the interests of their own order, many measures of crude and hasty legislation would have passed in almost every parliament.' *

* Vol. iii. pp. 57, 58.

To these merits of aristocracy he adds that it is pacific, partly from dislike of change, partly from military unfitness, partly from jealousy of military eminence, and partly from the want of individual ambition; that it encourages genius in arts and in letters; that it excites and preserves the spirit of personal honour; and that it is favourable to order and subordination.

To a certain degree it appears to us that Lord Brougham again attributes to aristocracy, as a form of government, effects—such as a high sense of honour and refined taste—which are the results of the existence of a privileged order; an institution which, as we have already remarked, is as consistent with an absolute monarchy or a mixed government as with an aristocracy. An aristocratic government without a privileged order would not contain persons sufficient in number to affect materially the general tone of society. If its members sat only for life, they would carry into it the feelings of the classes from which they were taken. Nor do we agree with him as to the beneficial influences of aristocracy on the fine arts or on letters. The greatest works of the arts which address the eye belong to absolute monarchies, the next greatest to democracies. The Pharaohs built Thebes and the Pyramids, the Moguls Agra and Delhi, a Roman Emperor the Coliseum, a Democracy the Parthenon. Of the Italian works of the fifteenth and sixteenth centuries, referred to by Lord Brougham, the greatest belong to the absolute monarchy of the Popes. The poorest period in English history, that which produced the fewest men

eminent in arts or letters, was the period during which the aristocratic element was predominant—the reigns of the first three Georges.

That an aristocratic government is pacific is true; it is pacific, not only from the reasons mentioned in the text, but also from its prudence and its want of passion. It is equally true that it is eminently firm, steady of purpose, and averse from change. These are the qualities which render the aristocratic element a necessary part of a well-framed government. It gives bone to the constitution. But in politics as in physiology, there is no disease more certainly fatal than ossification. Lord Brougham uses our House of Lords as an example of the utility of a body in perpetual resistance to change. Admitting, as he fairly does, that it has frequently stood in the way of improvements, constitutional, economical, and administrative, he seems to think that great advantage has arisen from 'its having had, during the last ten years, a preponderating share in the government of the country.'*

That the House of Lords has prevented much evil there is no doubt. But how much good has it prevented? How much evil has it prolonged? How much has it created? Without referring to the long period in which, under the domination of Lord Eldon, it steadily defeated almost every legal and administrative improvement, it is to the House of Lords that we owe the present state of Ireland. Had it allowed the House of Commons in 1825 to grant Catholic Emancipation, and a provision for the Catholic clergy, the British islands would now have been morally as well as

* Vol. ii. p. 59.

legally an united kingdom. One of the worst effects of this hostility to change, is its tendency to produce the most complete of all changes—a revolution. With one remarkable exception, that of Venice, pure aristocracies have been the most short-lived of governments. They are barriers behind which abuses accumulate until the whole structure suddenly gives way.

It is remarkable that, in his statement of the virtues of aristocracy, Lord Brougham includes only its moral virtues. He gives it no credit for peculiar talent, knowledge, or skill. This may arise in part from his generally assuming it to be hereditary. But even the hereditary members of an aristocracy are likely to possess far more than average political knowledge. The *selected* members of an aristocratic body—and there are many such bodies in which all, and very few in which none, are selected—are generally men of eminent talent. The most distinguished body in the United States is the Senate, in France the House of Peers, and, according to Lord Brougham, the British House of Lords possesses a general superiority 'in capacity, in learning, in calmness, and in statesmanlike views of both foreign and domestic policy.'*

To this must be added experience; not merely the personal experience of its members, most of whom have passed a political life, but the experience which belongs to the body itself. A legislative body which never dies, which is recruited by insensible additions and substitutions, acquires a traditional wisdom exceeding that of the indi-

* Vol. iii. p. 65.

viduals who compose it. The correct appreciation, too, which those individuals obtain of one another, gives the lead to those who are best fitted for it. A newly constituted assembly is likely to exhibit less, an ancient one to exhibit more, than the average intelligence and knowledge of its members.

We are apt, in England, to complain that the most important posts in the public service are filled by persons whose claim to them was birth, connection, or wealth, and that the result is general mediocrity and frequent incompetence. The assertion, that we select our higher political functionaries from the comparatively small number of men who possess rank or fortune, is true; but it is not equally clear that this is an evil, or that it is avoidable. Political life, in general, and, more than any other branch of it, parliamentary life, is costly, uncertain, and unremunerative; and what, more than any other cause, narrows the entrance to it, it requires early apprenticeship. Of three men, of equal talents and diligence, who enter the House of Commons, one at the age of twenty-five, one at thirty-five, and the third at fifty-five, we may predict, that the first will have an enormous advantage over the second, and that the third, unless he have previously practised a profession to which public speaking is incidental, will fail. The prizes of political life, therefore, are, by the very nature of the contest, reserved for those who, by means of their own wealth, or that of their friends, can devote themselves in early life to the arena, and support its long and expensive training.

Nor, we repeat, is it clear that this is an evil. It is perhaps an evil that powers of debate give an undue preponderance to their possessor, but this is not an aristocratic inconvenience: it is one inseparable from free institutions. Those who feel, as we do, that without such institutions life would not be worth having, must submit to be ruled by rhetoricians. The necessity that a statesman should be a speaker, and the probability that the best speaker of his party will become its leader, may exclude some men whose wisdom, knowledge, and experience, we can ill afford to lose, it may put others, whose judgment or industry or honesty is deficient, into stations in which their faults may be mischievous in proportion to their rhetorical ability; but it is unavoidable, and it secures, at least, that our parliamentary chiefs shall have high talents, though not always the most useful ones. It lets in marplots, but it excludes dunces. And if we compare our statesmen with those of the countries which are governed either despotically or democratically, with those of Belgium, or of Holland, or of Prussia, or of Austria, or of Russia, or, to take the country which most resembles us in every respect, except its democracy, with those of the United States, it would be false modesty if we were to limit our claim to that of mere equality.

But this reasoning does not apply to the army. That is a profession which all who embrace it enter at an early age: the poorest perhaps at the earliest. Instead of being like politics, necessarily the monopoly of the rich, it is naturally the refuge of the poor. The cheapest way to

provide for a son is to get him a commission. It requires no expensive preparation. Any young man of talents and energy can procure, or can give himself at little cost, a good military education. There appears to be no reason—in fact there *is* none, unless one be found in our aristocratic institutions—why the highest ranks, or why all ranks in the army, should not be open to merit, though low-born, and even though indigent. It might then have been expected, à priori, that our highest military posts would be as well filled as our highest political employments—indeed better, since there is a far wider field for selection.

And if the military leader were selected, like the political leader, by those whom he is to command, such would be the case. Unhappily, he is not so selected—perhaps cannot be so selected. The men on whom the fate of an army, perhaps of a country, perhaps of the civilised world, may depend, are chosen by those over whom their subsequent conduct has no immediate influence. If, through the stupidity, or the ignorance, or the rashness, or the ill-temper, or the false shame of a superior officer, English soldiers are uselessly massacred—if, through the folly or the timidity of another, they are kept disgracefully in reserve—if men are ordered to form square when they ought to charge, or to retreat when there is no salvation for them but in advancing—if they are left without orders because the officer who ought to give them has lost his presence of mind and self-command—those who appointed these incompetent functionaries do not see the results of their appointments, do not hear of them for weeks,

frequently do not hear of them at all. If they *do* hear of them, they may suffer remorse; but they escape punishment, often, indeed, blame. On whom has the ignominy of the appointment which produced the calamities of Cabul fallen? On no one. Who is responsible for retaining in high commands men who, be it their fault or be it their misfortune, escape from services of danger because they have lost the confidence of their superiors and of their subordinates, and are not employed by the one because they might not be obeyed by the others?

No individual can be held responsible. The blame is always thrown on the claims of high birth, on the claims of seniority, on the routine of office, on professional etiquette—in short, on the hateful abuses and childish pretexts which make the military professions the only ones in England in which merit is unproductive of advancement, or demerit of dismissal.

From all these chains, which bind the English giant, an absolute monarch is free. He can choose the best man, he can put him in the situation for which he is most fit, and he can delegate to those whom he may think deserving of it the absolute power of choice and rejection which he enjoys himself. His general is not expected to distribute his doses of praise among his officers according to their rank: he can mention in his despatches, without apology, captains and subalterns, and even privates. There is something grand, something magnanimous, in the unnoticed unrewarded heroism of the English soldier; but is it safe, or is it wise, or is it grateful, to rely on such magnanimity, or even to expect it?

Some time ago, during one of the quarrels which Louis Philippe's Chamber is always picking with England, we discussed with a French general the possibility of our being surprised by an unexpected invasion from France.

'Those who think,' said our military friend, 'such a surprise possible, never prepared an army for a campaign. It is true that a warlike nation can, without many previous arrangements, make an inroad on an unarmed neighbour. It would not take us long to make a rush on Brussels. But if a serious invasion is to be attempted, if good troops are to be encountered, if an army is to be got ready to which the honour of the country can be entrusted, six months is the least period of preparation.

'First, the different regiments that are disposable must be sifted, in order to get from each of them two bataillons d'élite for foreign service. These battalions must be united in brigades, and the capacity of the regimental officers tested by the chef-de-brigade, in the same way as that in which those officers tested that of their own privates and sous-officers. All who cannot stand this test are sent back to the battalions kept at home. The brigades, again, must be united in a division. They must be accustomed to act together, to know how far one regiment and one brigade can rely on another. The general of division has to do only with the colonels. He sends back, without ceremony, without excuse, all whom he finds too old, or too negligent, or too ignorant, or too dull for real fighting. The comparatively humble social position of our regimental officers, more than two-thirds of whom

have risen from the ranks, enables him to do so without mercy. It is thus, by a long obstinate process of selecting, and training, and changing, and promoting, and discharging, that a division is moulded into one mass of homogeneous materials, the efficiency of which can be relied on, as we rely on that of a well-constructed machine. If any one step in the process be omitted, or even hurried over, the machine becomes imperfect, and if it be opposed to one that has been properly prepared, it breaks in the general's hands. But this takes time. I said six months, but that is too little. The army that gained Austerlitz had been subjected to this training for two years.'

'But the army,' we answered, 'of the Hundred Days, the army which gained the great battle of Ligny, was raised by Napoleon in six weeks.'

'Yes,' said the general; 'but you must recollect what were his materials. More than 180,000 veterans, who, though young, had passed years under fire—whom, in his presumption, he had scattered over all Europe, from Dantzic to Alexandria—were restored to France by the peace. He had only to stamp, and the legions sprung up. And, after all, what was the result? This hastily-collected army was broken, was scattered, was actually dissolved, as no French army ever was before, in a single battle. Would the army of Austerlitz have thus fallen to pieces? I will not say that that army would have gained Waterloo (though, if it had been ready, as it would have been, to attack at eight in the morning, instead of at eleven, the

chances would have been in its favour); but it would not have been ignominiously beaten. It might have failed, but it would not have been destroyed.'

Would it be possible thus to melt and remelt, and hammer and twist, and grind and polish, to the highest perfection of efficiency, the army of an aristocracy? Could military peers, or members of the House of Commons, or friends of peers, or of members, or of editors—in short, could any persons capable of appealing, directly or indirectly, to the public, be thus treated? Can an incompetent general or colonel be sent home at the risk of a debate? An absolute monarch can appoint, promote, dismiss, and degrade. He can look only to the interests of the campaign, and despise those of the individual, because in such a government there is no public, and no appeal. Such a government purchases at an enormous price an enormous military advantage.

We now proceed to the third of Lord Brougham's great divisions—Democracy. He defines democracy to be 'The constitution which allows the superior power to reside in the whole number of citizens, having never parted with it to a prince, or vested it in the hands of a select body of the community, from which the rest are excluded.' Inattention to the cross-division of exclusive and non-exclusive, which, as we have remarked, runs through all forms of government, as it rendered Lord Brougham's definition of aristocracy too wide, renders this

* Vol. iii. p. 2.

too narrow. It comprehends no exclusive form. Lord Brougham endeavours to meet this difficulty by considering democracies as less or more pure as they are more or less exclusive. But for scientific purposes, though there may be degrees of impurity, there cannot be degrees of purity. Whatever is not perfectly pure is impure.

If a definition of 'pure democracy' be necessary, we think that the most convenient one would be—the government in which supreme legislative power is vested in a large number of persons, without any participation or any control on the part of any other body, or of any individual. But, as we have already said, such governments, if they have ever existed, are so rare, that we prefer considering, not democracies, but the democratic principle; which we have already defined to be the possession of legislative power, directly or indirectly, by a large number of persons.

Lord Brougham re-affirms that the constitution is not the less democratic because the people legislate only through representatives. We must repeat our dissent. The delegation of legislative power is, pro tanto, a suspension of it. It substitutes, pro tanto, the will of a few for that of many. In proportion to the period of delegation, the opinions and wishes of the delegates, however complete may have been their coincidence, at the time of delegation, with those of their then constituents, are likely to deviate from those of their constituents for the time being. The first reformed House of Commons represented the feelings and wishes of its existing constituents more

completely, probably, than any previous or, indeed, than any subsequent House. But if it had been entitled to sit for twenty years, would it now represent them? Delegation certainly does not destroy but it weakens the democratic principle, and we consider all governments in which it prevails as aristocratic or mixed—aristocratic, if the delegating body be a small one, as was the case in Venice—mixed, if the delegating body, though perhaps itself a minority, be large, as is the case in France and in the American Slave States. Consistently with his own nomenclature, Lord Brougham has considered the subject of representation under the head of democracy. In pursuance of ours, we reserve it until we come to mixed governments.

Lord Brougham sums up the virtues of the purely democratic system under nine heads. Of these, five—namely, its tendency to render administration pure, to promote political discussion, to diminish civil expenditure, to render the resources of the state available for its defence, and to force individuals to respect public opinion—may be, more or less fully, admitted. The remaining four we will briefly consider, using Lord Brougham's words, but somewhat changing his arrangement.

1. The fundamental peculiarity (says Lord Brougham) by which this is distinguished from other forms of government is, that the people having the administration of their own concerns in their own hands, the great cause of misgovernment, the selfish interest of rulers, is wanting; and if the good of the community is sacrificed, it must be owing to incapacity, passion, or ignorance, and not to deliberate evil design. The sovereign in a

monarchy pursues his own interest—the privileged body in an aristocracy that of their order, or of its individual members. No such detriment can arise in a purely popular government. At least the chances are exceedingly small, and the mischief can only arise from some party, or some individuals, obtaining so much favour with the people at large as to mislead them for their own ends; a thing of necessarily rare occurrence, because there will always be a conflict of parties, and the people are prone to suspicion of all powerful men.

2. No risk is run of incapable or wicked men holding the supreme direction of affairs, either in the legislature or in an executive department. No infant in the cradle, no drivelling idiot, no furious maniac, no corrupt or vicious profligate, can ever govern the state and bring all authority into hatred or contempt.

3. The course of legislation must always keep pace with the improvement of the age. The people always communicate to the laws the impression of their own opinions. No sinister interests can interfere to check the progress of improvement. No prejudices of one class, no selfish views, have any weight.

4. The personal ambition of an individual, his feelings of slighted dignity, his sense of personal honour, as well as his desire of aggrandisement, have no place under this scheme of polity. Had the virtuous Washington himself become enamoured of military glory, and desired to extend the dominion of republican institutions over Canada or New Spain, the people would have speedily taught him that war is a game the people are too wise to let their rulers play.*

We have already stated our reasons for believing the democratic element to be far more favourable to war than either of the others. The reference made by Lord Brougham to the United States is unfortunate. They have already extended the dominion of republican institutions over a portion of New Spain; and if the popular will had been omnipotent, would have seized Canada. Nor

* Vol. iii. pp. 109, 110, 111.

can we agree with him in ascribing to democracy a peculiar exemption from unjust or unenlightened legislation, or from the domination of persons morally or intellectually unfit for power. Where the democratic element prevails in an exclusive constitution, laws are often made for the express purpose of oppressing the excluded classes; and when there is no legal exclusion, a democratic majority is often a grievous tyrant to the minority. In the southern states of the American Union, the slaves are oppressed; in the northern states, the rich; in all, the people of colour. In the Swiss cantons, consisting partly of a town and partly of a rural district, the popular assembly, if the town interest prevail, tries to oppress the country—if the country interest, to oppress the town; and as the oppression of one portion of the community is always injurious to all, the good of the community is in fact 'sacrificed to deliberate evil design.' That Lord Brougham, with history open to him, and in fact having studied her pages diligently—with Athens and Rome representing the past, and Ireland and Canada the present—should gravely say that the chances are exceedingly small that some party or some individuals will be able for their own ends to mislead the people at large, is incomprehensible.

We admit that the people will always communicate to their legislators the impression of their own opinions; but for that very reason we do not believe that, where the democratic element is the strongest, and still less where it is the only one—and Lord Brougham is now speaking of pure democracies—the course of legislation will keep pace with the improvement of the age. In every country there

are a few individuals whose political wisdom far exceeds that of the mass of their fellow-countrymen. In a monarchy, or in an aristocracy, it is possible that they may guide or even constitute the government; in a democracy, it is not. The majority of every nation consists of rude uneducated masses—ignorant, intolerant, suspicious, unjust, and uncandid; without the sagacity which discovers what is right, or the intelligence which comprehends it when pointed out, or the morality which requires it to be done. Does anyone believe that the public conduct of America—her ambition, her quarrelsomeness, or her dishonesty—reflect the intellectual and moral advance of the country? That advance is as great in America as in Europe. Their best men are equal to ours. The mass of the people is superior to any European population. But the democratic element has become triumphant; and its influence has been shown by popular violence, by international litigiousness, by anti-commercial tariffs, and by repudiation. So far from there being, in a democracy, no risk of wicked men holding the supreme direction of affairs, we believe that it is a danger to which even absolute monarchy is less exposed. How else has 'demagogue' been a byword of reproach, from the times of Cleon to those of Marat?

Lord Brougham's enumeration of the vices of democracy is executed with great spirit; but as we generally agree with it, and as the substance had often been said before, though seldom so well, we will dwell on only one of its points.

There is one establishment (says Lord Brougham) which appears incompatible with democracy, and that is a system of

religious instruction endowed and patronised by law, with a preference given to it by the state over all other systems, and a preference given to its teachers over the teachers of all other forms of belief—in other words, a religious establishment.*

He assigns as the grounds of this incompatibility—first, the reluctance of the dissenting portion of the community to contribute to the diffusion of what they believe to be religious error; and, secondly, that an establishment supposes a clerical order possessing great personal weight, endowed by the state, but unconnected with the government, and that the existence of such an order is wholly repugnant to democracy. To ascertain whether this be a virtue or a vice of democracy, he enquires into 'the virtues and vices of religious establishments;' or, rather, compares their vices with those of the voluntary system.

He states the objections to an establishment to be three. First, that to be compelled to support a religion which a man conscientiously disapproves, is a serious grievance; secondly, that an establishment always gives to the government secular support, and becomes itself, therefore, subject to secular influences; and, thirdly, that it tends to the restraint of freedom of speech and thought, to intolerant practices, and to the destruction of general improvement.

He then enumerates five objections to the voluntary system. First, that if the people were left to supply themselves with religious knowledge, many of them (and among these the classes which most require it) would often remain without it; secondly, that 'if the people are to

* Vol. iii. p. 126.

provide for the support of their own pastors, so must they select them also;' thirdly, that it promotes among the people the most dangerous of all excitements, religious excitement; fourthly, among the clergy, religious fanaticism; and, fifthly, political agitation. He then decides that the disadvantages of the voluntary system preponderate, and, consequently, that the absence of a religious establishment is among the defects of democracy.

It is obviously impossible that, within our limits, we should discuss the many questions thus raised; but we cannot refrain from considering a few of them. In the first place, the word 'establishment' is ambiguous. It may bear the meaning which Lord Brougham has given to it, of a religious system patronised by law, with a preference given to it by the state over all other systems, and a preference given to its teachers over the teachers of all other forms of belief,—that is to say, a *privileged* church. Or it may mean merely an *endowed* church—a church whose ministers are either salaried by the state, or allowed by the state to possess property in their corporate, not in their individual character, but which receives from the state no other patronage or preference. Such is the Presbyterian church in Ireland—such are the various churches of Canada. If the Bishops should be removed from the House of Lords, diocesan courts and church-rates abolished, and the Universities and the few offices from which they are now excluded open to Dissenters—events some of them certain, and all probable—the Church of England will cease to be a privileged church, but will

continue an endowed one. Now, we see no reason for thinking that a church endowed, but not privileged, is inconsistent with democracy; and we are inclined to think that such a church may possess nearly all the advantages which belong to an establishment in Lord Brougham's sense, and be free from almost all its disadvantages.

Secondly, we do not perceive the incompatibility of even a privileged church with democracy. Some of the most democratic portions of Europe—Belgium, Norway, and parts of Switzerland—possess such churches. They are inconsistent not with democracy generally, but with a democracy in which there is no one preponderant sect.

And, lastly, Lord Brougham appears to us to take too English and too Protestant a view of the voluntary system. The two countries in which that system prevails most extensively are the United States and Ireland. In neither of them is there any want of religious teachers. The instruction may not be good, but it certainly is abundant. Again, throughout the Roman Catholic world, though the people may pay the priest, they neither elect nor can they remove him. He is dependent on their favour for only a portion of his income. This dependence, indeed, has been sufficient, under peculiar circumstances, to render the Irish priest a most mischievous agitator; but such is not its necessary effect. In the United States there is no clerical agitation: everybody there is a politician, except the religious instructor.

On the whole, although we agree in Lord Brougham's preference of even a privileged church to the voluntary

system, we do not think that the latter is open to all the objections which he has made, or that the former is necessarily incompatible with democracy.

We have now arrived at the fourth and last class of governments, those in which two or more of the three elements—the monarchical, the aristocratic, and the democratic, or, in other words, the legislative powers of one, of a few, or of many—are combined.

It is obvious that such governments are divisible, according to the elements which they admit, into four. A mixed government may combine only the monarchical and democratic elements, or only the monarchical and aristocratic, or only the aristocratic and democratic, or may unite all three. The first of these is almost peculiar to small uncivilised tribes. As soon as such a tribe has swelled into a nation, the direct and constant exercise of power by the mass of the people becomes so difficult, that the chief makes himself absolute, and the government ceases to be mixed; or some smaller body is either substituted for the people, or appointed to share its power, and the constitution assumes one of the three other forms of mixed government. Nor is the mixture of monarchy and aristocracy common. A small select body, neither restrained nor supported by the democratic element, either deposes the monarch and reigns, as in Venice, a pure aristocracy; or (as is more frequently the case) is itself deposed by him, and the result is a pure monarchy; or is forced to share its power with the monarch and the people, or with the people alone, and the government falls into one of the two

remaining mixed forms. The mixture of the aristocratic and democratic forms is not uncommon. With the exception of Neufchatel, which is purely monarchical, this is the constitution of all the Swiss cantons. It is the form into which the constitution of every country which rejects the monarchical principle seems naturally to fall. The most common, however, of mixed governments is the fourth, that in which the three elements are combined; and, what is more important, it is the form of government to which all nations seem to tend as they advance in greatness and in political knowledge.

But we now come to a set of cross-divisions. Governments must be considered not merely according to the elements which they admit, but according to the mode and degree in which each element is admitted. The individual in whom the monarchical principle resides may be hereditary or elected. If elected, he may be appointed for life, or for a term of years, or annually. The constituency that elects him may be aristocratic or democratic. If elected for a period, he may, or he may not, be re-eligible. Some portion of the legislative power he must have; but he may have the initiative of all measures, or of some, or of none. He must have a veto, but it may be absolute or suspensive. He must be irresponsible while his power continues; but after it has ceased he may or may not be legally accountable for his conduct while in office. He may be authorised to exercise his powers personally, or only through his ministers. His ministers may or may not be responsible for his acts. Their offices may admit

them to the legislative assemblies, or exclude them, or have nothing to do with their presence there.

So the body in which the democratic principle resides may reserve some portion of direct legislative power, as is the case in the United States, where the constitution cannot be altered except by a convention, in which the electoral body becomes legislative; or it may part with the whole, as is the case in the British constitution. It may appoint its deputies for life, or for any shorter period. It may appoint them directly, or be authorised only to appoint electors. It may or may not be restricted in the selection of either the one or the other. It may or may not be empowered to bind its deputies by instructions.

These remarks are applicable, with little variation, to the body constituting the aristrocratic element. There might be some pedantry, but there would be no impropriety, if we were to subject aristocratic bodies to the same division to which we have subjected governments; and to term a select legislative body appointed by the sovereign, monarchical; an hereditary or self-perpetuated one, aristocratic; one created directly or indirectly by the people, democratic; and one in which two or more of these modes of creation or succession should concur, mixed.

Again, there is almost an equal variety in the modes in which the executive power may be distributed or collected. The monarch may have the whole, or some part of it, or none. In England, the aristocratic legislative body is also

the highest legal court of appeal. The initiative, and the details of arbitrary executive acts, belong principally to the democratic body, and occupy, under the name of private business, a very large portion of its time and attention. In the United States, the aristocratic legislative body shares with the monarch the power of making treaties, and of appointing some of the highest officers; and there are few modern constitutions in which the principal executive powers are not divided between the different legislative authorities.

The judicial power may be exercised by judges—hereditary, or appointed for life, or for a given period, or at the will of the appointer, or for one particular case. They may be appointed by the sovereign, or by a select body, or by the people, or by lot. Every one of these varieties may be found in one country. In fact, they all coexist in England.

Again, every mixed government is more or less exclusive, from that of France, where only about six persons out of a thousand have legislative power, direct or indirect, to those in Switzerland, in which every male above the age of sixteen is an elector, and for some purposes a legislator.

When the number of combinations is so vast, it appears to be dangerous to ascribe to the mixed form of government any qualities as universal, or even as general. A distinction, apparently trifling, of law, or of mere administration, may affect the whole working of a constitution. England is, we believe, the only country in the world

in which the sovereign is not present at the meetings of his own cabinet. There is, perhaps, no other single cause which has tended so much to weaken the monarchical element in the English constitution. But it is no part of that constitution; it is a mere usage, which sprang up accidentally, in consequence of George I.'s ignorance of English. Important as it is, and now we trust unalterable, the fact of its existence is little known out of the British islands, and perhaps is not notorious even there.

Again, in France no proceedings can be taken against any officer of the government for any official act, unless by the permission of the government—a permission which the government can refuse at its discretion, and in a large proportion of cases does refuse. This law can scarcely be said to affect the French constitution as a form of government. It does not render it more monarchical, aristocratic, or democratic; but its first effect is to deprive all the inhabitants of France of any legal security against the oppression of their government. Its second effect is to drive them to supply, by illegal resistance, the want of a legal remedy. In England, if a tax-collector should endeavour to enter a house in order to count the windows, the owner, after warning him of the consequence, would quietly submit, then bring his action, and be amply recompensed by damages. The collector knows this, and nothing of the kind takes place. In France, such an occurrence occasioned, a year or two ago, deplorable scenes of violence and bloodshed. The collectors and the inhabitants both believed that the government would protect

its officers. The collectors tried to force their way into the houses, the inhabitants to repel them, and the consequence was a petty civil war.

Again, the American President is elected for only four years, but is then re-eligible. Washington allowed himself to be re-elected once, but not oftener. This example has been generally followed. No president has served more than eight years; but every one has been a candidate for re-election at the end of his first term of four years, and many a one has succeeded. The consequence is, that the first business of every president is to secure his re-election. To raise his own party and to depress his opponents—to dismiss the whole body of executive officers, and supply their places with his own partisans—to support slavery if he be strong in the south, or abolition if his strength lie in the north; to be a free-trader in the one case, and a protector of domestic industry in the other; to favour the great moneyed institutions if they support him; to destroy them, at the risk of paralysing the whole commerce and industry of the country, if they oppose him; to be litigious, insolent, and warlike in his diplomacy, if his friends lie among the dealers in arms, or in privateers, or among manufacturers anxious to engross the home market; to be pacific if he rely on the importers of plantation supplies, and the exporters of cotton or tobacco; but, under all circumstances, to adopt the language, stiffen the prejudices, inflame the passions, and obey the orders of the mass of the people. Such are the occupations in which every

president spends the first four years of his reign, and, if he be not re-elected, the whole. To the influences which thus corrupt and degrade the person who is both her chief magistrate and her prime minister, we attribute much of the deterioration of the public, and, we fear we must add, the private character of America—the bluster, the vanity, the rapacity, the violence, and the fraud, which render her a disgrace to democratic institutions.

But if Washington had refused to be re-elected, it is probable that this frightful source of misgovernment and demoralisation would never have broken out. The interests, and, what is more important, the passions of all parties, the jealousy of competitors, the inconstancy of the people, and the unpopularity which is unavoidably acquired in four years of supreme administration, would have effectually prevented any of his successors from asking for an honour and a power of which even Washington had not thought himself worthy. And though the constitution of America would have remained the same, its practical working would have been essentially altered.

Although, therefore, we have ventured to ascribe certain qualities to the three pure constitutions, or rather to the influence of the monarchical, aristocratic, and democratic elements respectively, we are afraid to give any general character to the indefinitely various forms in which those elements may be combined. All that we can affirm is, that it appears to be probable, first, that by combining the three elements, or at least two of them, a form of government may be obtained which, in ordinary circumstances, will be

more favourable to the welfare of the people than any one of the simple forms. Secondly, that the forms under which there has been the greatest moral and intellectual progress, and, we are inclined to think, the greatest happiness, have been mixed. And, thirdly, that the very worst forms of government—forms which, like that of Poland, after having rendered nations for centuries miserable in themselves, and a source of misery to their neighbours, have utterly destroyed them, or been destroyed themselves—have also been mixed.

Lord Brougham is bolder. He states, that a mixed government possesses, over all others, three great advantages; namely, first, 'That it protects the public interest from rash, ill-concerted counsels; secondly, that it secures the freedom and the rights of all classes in the community; and, lastly, that it maintains the stability of the political system.' *

Now it is certain that the introduction of the aristocratic element has a tendency to diminish the rashness, passion, and short-sightedness which belong sometimes to a pure monarchy, and always to a pure democracy; but it is by no means certain that the introduction of the democratic element would produce the same effect in a pure monarchy, or even in a pure aristocracy. The Venetian government, the most prudent that has ever existed, was a pure aristocracy. That of Prussia, also eminently prudent, is a pure monarchy. The conduct of France was far more

* Vol. iii. p. 168.

prudent, her councils far less ill-concerted, before the Revolution of 1789 than they have been since she substituted a mixed government for an absolute monarchy.

Again, the protection of the rights of all classes of the community depends, not so much on the government being mixed or pure, as on the degree in which it is exclusive. The excluded classes are always in danger of oppression, and many mixed governments have been eminently exclusive. It was the mixed exclusive government of England that enacted the penal laws against Roman Catholics. It was from the mixed exclusive government of Denmark that the people fled for refuge to an absolute king. The Austrian monarchy is pure in Lombardy and mixed in Hungary. But in Lombardy it is non-exclusive: no class has any privileges or immunities at the expense of the community. In Hungary four-fifths of the inhabitants are excluded from all political and from most social rights. Mixed government has not saved them, as it did not save the Roman Catholics of Ireland, from a degree of oppression to which no class is subject in any of the absolute European monarchies, except Russia and Turkey, if these monarchies are to be called European.

Lastly, there are reasons for doubting the superior stability of mixed governments. Pure democracies, indeed, are necessarily unstable. They must be destroyed by the mere increase of territory or of population; but many pure monarchies have endured for centuries undisturbed by any serious internal commotion. So have some

pure aristocracies. Perhaps when we consider the rarity of that form of government, and the frequency of the mixed form, the former has exhibited as much stability as the latter. On the whole, we are inclined so far to disagree from Lord Brougham as to think, that a pure monarchy, or a pure aristocracy, is more stable than any mixed form admitting only two elements; but so far to agree with him as to believe that the greatest amount of stability is to be obtained by the union of all three.

Throughout this discussion we have adhered to our own nomenclature, and have included among mixed governments those in which the body of the people act through their representatives. If we had adopted the nomenclature of Lord Brougham, and had included among pure democracies all governments in which the legislative authorities are elected directly or even indirectly by the people, we should scarcely have ventured to attribute to mixed government even the qualified superiority which we have assigned to it. If the President and the Senate of the United States were elected for life—if the President could act only by the advice of his ministers, and those ministers were responsible, and, instead of being excluded from congress, were ex officio members—the constitution would still, according to Lord Brougham's nomenclature, be not a mixed government but a pure democracy, since all legislative, and indeed all executive, authority would flow, directly or indirectly, from the people. But we are inclined to think that such a constitution would work well—quite as well as if the President,

or the Senate, or both of them, were rendered hereditary, and the constitution thus changed from pure to mixed.

In the very striking chapter in which Lord Brougham anticipates the consequences of the further moral and intellectual improvement of mankind,* he states that a progress is making by the people which will in time enable old countries to be governed democratically; and that the tendency of human affairs is, that the people should select their chief magistrate. And if they elect their King and their House of Commons, it is nearly certain that they will also think fit to elect their House of Lords. We are not sure that for a well-educated people this would not be the best constitution; and if it is to be called a pure democracy, we can no longer affirm, as a universal proposition, that a mixed constitution always offers better chances for public welfare than a pure one.

We have now to consider an institution which is treated by Lord Brougham as compatible with every form except pure monarchy and aristocracy, and by us as confined to mixed government—Representation.

Representation, however, is not a subject to be discussed in a couple of pages. We shall shortly sum up the most important of Lord Brougham's conclusions, without expressing dissent or concurrence. Where we agree with him, the mere expression of our assent could add nothing to his authority; and where we disagree, the mere expression of

* Vol. iii. chap. 20.

our dissent, unsupported by argument, would be dogmatical, and indeed presumptuous.

The substance of Lord Brougham's canons of representative government is this:

The power of the people is to be transferred for a period exceeding one year, but not exceeding three years, to their representative. They are not to attempt to resume it during that time, or to fetter him by instructions. There should be no qualification of eligibility; and all persons of full age, unconvicted of infamous offences, who have received a good plain education, should be electors. The election should be direct, and by open voting, but in such a manner (*how* is not specified) as to protect the voters' independence. The constituencies should consist not of mere towns or counties, but of electoral districts so large as to prevent corruption—from 5,000 to 6,000 electors being the minimum—and so arranged as to secure representatives of all the great classes in the community, but not giving to any one large town a proportionate, and therefore a very numerous, representation.

To these canons Lord Brougham allows no exception. He does not propose them merely as the theoretic principles of the best form of representative government, but as the principles to which every such government ought to be made to conform. Many years ago, in his letter to Lord John Russell, he recommended their adoption, so far as they have not been already so adopted, into the British constitution. It is, therefore, Lord Brougham's deliberate advice that the British House of Commons should be

triennial, and should be chosen in large electoral districts by the suffrage of all persons who have received a good plain education, which in a short time must practically be universal suffrage. Now, without infringing our rule of expressing on the subject of representation neither assent nor dissent, we may remark that such a change would be a revolution—using that word to signify not a violent anarchical movement, but a change in the depositaries of power. As the labouring classes form the great majority—probably nineteen-twentieths of the population—such a constitution would give them irresistible influence. The House of Commons, even now, while it is returned by not one-tenth of the people, is the preponderating power in the British Empire. Returned by universal suffrage, representing, not as now a fraction, but the whole of our population, it would trample on the Crown and the House of Lords. The British Empire would be governed by the agricultural labourers in the country, and by the artisans in towns. Such a change would exceed in magnitude the changes effected by the Reform Act—at least as much as those changes exceeded all that was proposed by Mr. Pitt or by Mr. Brougham.

We have now reached the last of the portions of Lord Brougham's work which we have selected for criticism—his view of the existing British constitution. It is to be observed that his exposition is not merely legal, but also practical; that he states not merely the theory of the constitution, but its actual working.

The great virtue (he says) of the constitution of England is the purity in which it recognises and establishes the fundamental principle of all mixed governments; that the supreme power of the state being vested in several bodies, the consent of each is required to the performance of any legislative act; and that no change can be made in the laws, nor any addition to them, nor any act affecting the lives, liberties, or property of the people, without the full and deliberate assent of each of the ruling powers.*

Consistently with this view, he holds that the constitution wills that the opinions of the monarch 'should have a sensible weight, even against the most conflicting sentiments of the people and of the peers,' † and should operate as a check on the other branches of the system. And he further maintains, that the government cannot be carried on for any length of time unless the ministers of the day have the decided support of *both* Houses of Parliament.‡

We venture to question this view both in theory and in practice. It appears to us that important legislation has taken place in past times, and is likely to occur in future times, against the deliberate will of one, and sometimes of two, of the ruling bodies; and, further, that the government can be carried on for an indefinite period with a decided majority in only one House of Parliament; and, lastly, that those who gradually introduced the usages, the aggregate of which forms the British constitution, intended that this should be the case.

For the facts we need refer only to the most recent history—to the Emancipation Act carried against the

* Vol. iii. p. 295. † Ibid. p. 302. ‡ Ibid. p. 315.

deliberate will of George IV.; to the Reform Act, carried against the deliberate will of the House of Lords; to much subsequent legislation, disapproved of by both the Crown and the Peers; and to Lord Grey's ministry—the most powerful at home and abroad, the strongest in every way that modern times have seen—ruling not merely without the support of both Houses, but opposed in one of them by a decided and constantly-increasing majority.

If it be said that in these cases the consent of the Sovereign and of the Peers, however reluctant, was in fact given, the answer is, that it was given because the constitution itself prevented its refusal. The Sovereign acts only through his ministers, and no minister would have dared to advise George IV. to veto the Emancipation Bill. The majority of the House of Lords knew that a few pieces of parchment could convert it into a minority. They believed that the expedient would be used; and though they refused their direct consent to the Reform Bill, they neglected to record their dissent. If the constitution had willed 'that the individual monarch should be a substantive part of the political system as a check on the other branches,' * it would have allowed him liberty of action. It would not have required that, to give validity to his acts, other persons should adopt them, and assume their responsibility.

The fact is, that the influence really exercised by the sovereign is unconstitutionally exercised. The constitution

* Vol. iii. p. 302.

supposes the Crown to take no part in legislation until the proposed law has passed through both Houses. In the rare cases in which the Sovereign has interfered in legislation, he has done so by preventing the introduction into Parliament of the measures to which he was opposed, and we doubt whether such a case will ever occur again. 'If he can find any eight or ten men,' says Lord Brougham, 'in whom he has confidence, who are willing to serve him, and whom the Houses will not reject, he has the choice of those to whom the administration of affairs shall be confided.'* Certainly; but in general it is found that there are only eight or ten men in the kingdom who are willing to serve him, and whom the Houses will not reject. It has frequently happened that these were not the eight or ten men in whom the Sovereign had confidence; but he has been obliged to continue or even to appoint them ministers. His right of choice is that given by a *congé d'élire*.

Again, if the framers of the constitution had intended 'the separation and entire independence of its component parts'†—if they had intended that the House of Lords should possess a real 'veto upon all the measures that pass the Commons'‡—it seems inconceivable that they should have subjected that House to absolute dependence on the Crown—that they should have allowed the Sovereign to pack it at his pleasure—to give it a Tory, a Whig, or a Radical majority, as often as he may think fit. Nor can it be said that this power is obsolete, or even dormant. It

* Vol. iii. p. 302. † Ibid. p. 301. ‡ Ibid. p. 305.

was used by Lord Oxford—it was used by Lord Brougham —it was abused by Mr. Pitt. He packed the Irish House of Lords, by adding to it more than one hundred and fifty peers—forty-six of them in one year; and then, to make this gross injustice irreparable, prohibited by the act of union its further increase. He found the British House consisting of only two hundred and ten temporal peers; in thirteen years he added to it eighty-five. When the Tory reign ended with Lord Liverpool, one hundred and seventy-eight British peers, and twenty-eight Irish, all belonging to one party, had been added to it. If it be true that no government can be carried on unless the minister have a decided majority in the House of Lords, either the government of the party now in power is immortal, or the accession of a Liberal minister must be accompanied by the creation of two hundred peers.

If we reason with respect to the British constitution as we do with respect to every other elaborate contrivance—if we infer the intentions of its framers from the results which they have effected—it appears clear that differences of opinion between the three legislative bodies were foreseen, and means taken to give a decided preponderance to that which should have the support of the people. We say, which should have the support of the people, because the House of Commons, unless decidedly supported by the people—that is to say, by the constituencies—is not merely the weakest of the three estates, but is absolutely powerless; but supported by the people, it rules easily if one of the other two estates assist it; and rules, though not with-

out difficulty, even if the other two oppose it. Thus the Commons and the Crown united can at once trample under foot the opposition of the Lords; the Commons and the Lords united are practically in no danger of opposition from the Crown, and, if opposition were to take place, could terminate it by depriving the Sovereign of his ministers. But the Crown and the Lords united are impotent against a House of Commons backed by its constituencies. All that they can do is to dissolve; and a re-election sends them back only a more numerous and a more determined opposition.

It must have been for the purpose of producing this result that the power of creating new boroughs was gradually withdrawn from the Crown. While that power existed the Commons were as much at the mercy of the Crown as the Lords are now. As soon as it ceased, they became as independent as the Lords would have become if the Bill which restricted the power of creating peers had passed. Those who deprived the Crown of the power of increasing or packing the House of Commons, and those who continued to the Crown the power of increasing and packing the House of Lords, must have intended that in the British constitution the democratic element should be supreme.

There is no proposal for constitutional change that Lord Brougham dismisses so contemptuously as an alteration in the constitution of the House of Lords. 'It deserves,' he says, 'to be noted, that all these senseless projects have long since been abandoned by their thoughtless authors,

who, a few years ago, considered the safety of the empire to depend upon what they termed Peerage Reform.' * He believes that the consequences of a large creation in 1832 would have been dreadful; that it would inevitably have ruined the constitution.†

Now, we dread all great changes simply because they are great changes—because we know that their whole results never can be anticipated, and that, even if they effect their intended purposes, they may effect them at a sacrifice which would not have been submitted to if it had been foreseen. We do not believe, indeed, that Peerage Reform would produce so great a change as is expected by its enemies, or by its friends; but the change would be great, and that is a sufficient reason for avoiding, or, at all events, for deferring, it as long as it can be deferred. But we cannot think that it is a senseless project. We cannot but feel that a state of circumstances is possible, we trust not probable, in which it may be beneficial and even necessary. While the House of Lords plays no part in the great game of political power—while it contents itself with performing the important but subordinate duties of a court of revision, in which the legislation of the Commons is reconsidered, improved, suspended—and, when the popular will is not decidedly expressed, even rejected—it will continue unaltered in form, and, unless some profligate administration should repeat Mr. Pitt's profuse creations, unaltered in substance; but if in an evil hour it should

* Vol. ii. p. 16.

† Vol. iii. p. 308.

assume equality with the Commons—if it should attempt to share the sovereignty which that House now exclusively exercises—if it should try to dictate what party and what persons shall be our governors, the days of its apparent independence are numbered.

We will explain our views by supposing a possible, though certainly not a probable, state of circumstances: Suppose that, in the last session, the public opinion of the constituent bodies had been decidedly in favour of a ten hours' factory bill—that Sir Robert Peel had resisted, had dissolved, and had been met by a House of Commons with a hostile majority of 500, and had endeavoured to govern with only 150 supporters—had endeavoured, in short, to treat the House of Commons as more than one minister has treated the House of Lords—the Commons would have passed a vote of want of confidence. If that produced no effect, they would have addressed the Crown to remove its ministers; if that failed, they would have stopped the supplies. As the hostile majority would have been unassailable, as a fresh dissolution would only have increased its numbers and its determination, the Crown must have complied, and appointed a new administration.

If now the House of Lords had followed the precedent set by the Commons—if it had resolved that the new cabinet had not its confidence—had requested its removal—and had enforced that request by rejecting the money bills and the mutiny bill, the necessary consequence would have been, not that the Commons or the Crown would have yielded, but that the hostile majority of the peers

would have been neutralised by a large creation; and the result of one or two such occurrences must be Peerage Reform. The House of Lords would soon become too large to act as a deliberating body; and the course which has been twice taken to meet that difficulty would be repeated. At the time of the union with Scotland, it was supposed that the introduction of all the Scotch peers would form too large an accession to the House; they were required, therefore, to select representatives out of their own body. The same objection was removed by the same expedient on the union with Ireland. The distinctions between British, Irish, and Scotch peers, now become useless, would be abolished; and on every new parliament the whole peerage would be required to select a representative body. Such a body, if persons filling or who had filled certain high offices, were ex officio members, would constitute an aristocratic assembly; perhaps not remarkably inferior in virtue, in knowledge, in talents, in diligence, and even in wealth, to that which it is now our happiness to possess.

It is true that it would not be independent; since any minister, enjoying the decided support of the country and of the House of Commons, would be able, by a creation and a dissolution, to obtain a majority in the Lords. But, under such circumstances, is the House of Lords now, under the existing system, independent? Its independence is confined to the case of parties in the country, and in the House of Commons, being nearly equally balanced. In such a case the power of creation is virtually suspended.

If the minister, with a majority of twenty-five, create peers from the House of Commons, he destroys his majority, even if he should lose only one re-election out of three. If, to avoid this, he exclude from the peerage his supporters, he equally destroys his majority by disgusting the vain and selfish portion of his adherents; but if he have such a majority in the House as to be able to bear some loss on elections, and such a majority in the constituencies as will render that loss trifling, he can now govern the Lords by the threat implied, rather than expressed, of mere creation;—as effectually, perhaps, as he could do after the supposed Peerage Reform, when there would be the further necessity of a dissolution.

A few years ago, there did appear to be almost a probability that such a reform might become necessary. The House of Lords indeed abstained not only from straining, but, in a great measure, from exercising its political as distinguished from its legislative powers. Though exempt from dissolution and safe from creation, not merely independent, but, if such were its desire, dominant; with the power of expelling by a single vote an administration which it disliked and distrusted, it yet refrained from giving that vote. It did not address the Crown to dismiss its ministers, though such an address would, in the then state of parties, have been a command; but it displayed a temper, and pursued a course of obstruction, which excited alarm among our most intrepid and our wisest statesmen.

Year after year (says Lord John Russell) the Commons grow more impatient at the frustration of measures for which they

have laboured for many a weary night, which contain nothing revolutionary or intemperate, and which are despatched before dinner by some thirty peers, who, without reading the bills, and without listening to explanation, mar the fruits of a session. Year after year, the Lords, strong in their numbers, grow more and more eager for decisive battle. With these dispositions, the superiority of the Lords in matters of government may one day be asserted, or England may no longer bear the double sway of government in one House, and opposition in the other. Who are in that case to give the victory? Evidently the people of the United Kingdom. The country will ask in the end whether these measures were useful; and if so, why they were rejected. They will enquire who they are who have misused the power of legislation to indulge a party spleen; and those on whom that charge justly rests, will be the losers in the conflict.*

The conflict which Lord John Russell deprecated, was averted, partly by the wisdom, firmness, and authority of the Duke of Wellington, and partly by the speedy termination of the real struggle in the House of Commons. We now know, that such was the temper of the constituencies in 1839 and 1840, that if it had taken place, the victory would have rested with the Lords. On a dissolution, the people would have sided with them. The danger lay in the precedent;—in the fear that, in a different state of public feeling, the Lords, pleased with their apparent recovery of political power, might, on some other occasion, exercise their legal right to oppose the popular will; and thus force the Crown to exercise its legal right of putting down that opposition by a creation, which, in the state of parties which now exists, or in any which can be expected to exist

* Letter to the Electors of Stroud, 1839, pp. 41–43.

in that House, must be a very numerous one; and then, as we said before, Peerage Reform is inevitable.

If that event should actually occur—if the most distinguished, and, on the whole, the most enlightened hereditary body that the world has ever seen, should be changed into an elected senate, on whom will the responsibility rest? On those who endeavour to alarm the prudence of the House of Lords, or on those who may inflame its ambition? On those who, by pointing out its political subordination, endeavour to secure its legislative authority; or on those who may tempt it to temporary triumph, and ultimate defeat, by ascribing to it a political independence and a political equality, which it possesses neither in theory nor in practice? On those who may have to sacrifice its existing constitution to the welfare of the state; or on those who, without any necessity—in the mere insolence of power, by the wanton creations of forty years—converted it from a moderately-sized council, fairly representing both the great parties, into a large assembly; in which one set of opinions is always persisted in, one class of measures approved, and one body of leaders supported, by the same overwhelming and hereditary majority?

We now close these volumes, with gratitude to the author, for much amusement, information, and instruction —with respect for his learning, and with admiration of his genius. We feel that the account which we have given of his work is very imperfect. We have been forced to omit the whole of the historical portion, and many philosophical discussions of great merit; among others, those on Party,

on Checks, on Federal Union, and on Judicial Arrangements. This, however, is not of much importance. Lord Brougham will be read in his own, not in our pages. On looking back at what we have written, we are struck by its controversial tone. This is perhaps unavoidable in criticism, where the subject-matter admits of only probable reasoning. On such subjects, when there is perfect coincidence of opinion in the author and the critic, there is little opportunity and no necessity for remark; but when this perfect coincidence does not exist, if the matter be important, the critic feels bound to express his dissent; and, if the author be one whose opinions carry great weight, to support it by argument and illustration. We have agreed in opinion with Lord Brougham much oftener than we have disagreed; but in the one case we have generally been silent—in the other, we have thought it necessary to state at some length the grounds of our dissent. No one, we are sure, will judge us with more candour than the great author himself. He will feel that, whenever we have ventured to express dissent, it has been from no love of paradox or of opposition, but from a sincere difference of opinion on some of the most important, and, at the same time, most doubtful questions on which the human mind can be employed.

CHAPTER IV.

CONFEDERACY AND UNION.*

IN our review of Mr. Wheaton's work, we sketched an outline, meagre and imperfect, but still an outline of the great science which considers those relations of independent communities which are produced or regulated by international law. The rights, however, and, consequential on those rights, the obligations, which belong to sovereign nations by the general consent of the civilised world, are not the only relations to which they are subject. Any two or more nations may vary their mutual rights and obligations by compact. Such nations stand towards one another in the *federal relation*; under which term we include every relation created by treaty, from the slight ties which connect England and Sweden, down to the intimate confederation which binds, or is intended to bind, together the cantons of Switzerland.

The duties which may be imposed, and the claims which may be created, by this relation, obviously differ from those which owe their origin to international law. For if they were the same, treaties would be unnecessary; just as contracts would be unnecessary if all the relations between man and man were governed by municipal law. All that

* From the Edinburgh Review of January 1846.

international law in the one case, and municipal law in the other, can do, is to direct that treaties and contracts be faithfully performed, and to give rules in certain cases for their interpretation.

To attempt to enumerate, or even accurately to classify, the objects for which treaties are contracted, would be fruitless. Roughly, it may be said that their principal objects are four. First, the termination of existing disputes; secondly, the avoiding future ones; thirdly, mutual assistance; and, fourthly, the preventing one government from using its powers of external action, or of internal legislation, to the inconvenience of another.

To the first of these classes belong the treaties by which wars are ended, or by which controversies which might have inflamed into wars are settled. To the second belong arrangements of boundaries, of rights of passage and of fishery, agreements on controverted questions in international law, and, still more directly, engagements that all future disputes shall be decided, not by force but by arbitration. Treaties for mutual assistance are directed either against third states, which appear to the contracting parties to be strong enough to be objects of alarm, or to be weak enough to be subjects for spoliation or partition; or against particular classes of the subjects of the contracting governments.

To the fourth class belong commercial treaties, those which stipulate that the subjects of each government shall be capable of holding land or office in the other; those by which one contracting party renounces the right to engage

in war or in alliances without the consent of the other; and those which prohibit certain domestic institutions, such as a free press or religious disabilities. Of course, a treaty between nations, like a contract between individuals, circumscribes the freedom of action of each party; and as the purposes to be effected in common become more numerous, each confederate renounces more and more of its independence; until at length its separate nationality may disappear, and the confederacy becomes an incorporation.

In the following pages we propose to consider three of the principal existing confederacies—the Zollverein, the German Confederation, and the American Union; to give an outline of the most important provisions of each confederacy, and of the causes which led to their adoption; to point out some of their most material merits and defects; and to ascertain to what extent the states which have formed them have retained their separate independence.

The ZOLLVEREIN belongs to the fourth class of treaties. It is a commercial consolidation of the contracting states. But this object could not have been obtained unless each had sacrificed its power of independent action on several important subjects. The exterior frontier of the Confederate States is about 1,062 German miles in length—of which 774 belong to Prussia, 151 to Bavaria, 58 to Saxony, 3 to Wurtemburg, 60 to Baden, and the remaining 16 to Hesse Cassel; leaving to Hesse Darmstadt, Nassau, the Thuringian States, and Frankfort, no exterior frontier whatever. If the treaty, therefore, had contained no

stipulations except for mutual freedom of trade, it would have deprived the latter states of all revenue from customs, and have altered capriciously the revenues of the others—increasing those of Prussia, Baden, and Bavaria, and diminishing those of Wurtemburg, Saxony, and Hesse Cassel. To prevent this, it was agreed that the whole of the revenue collected along the exterior frontier should be brought to one account, and divided between the different states according to their relative population. This rendered a new set of provisions necessary: as the revenue collected by each frontier state was no longer her own, but a portion of a common fund, it would have been absurd to allow her to regulate it. A common tariff, therefore, was established. Another necessary consequence was the modification of excise duties, to prevent the excise revenue of one state from being destroyed by the introduction of unexcised commodities from the others. So far, however, nothing was done except with the express consent of each state. But neither a tariff nor an excise can remain long unaltered. Each must be modified from time to time, to meet the changes in production and in commerce. And if every alteration had required a new treaty, and could have been defeated therefore by the opposition of a single state, the confederacy would in time have been dissolved; either by the inconveniences arising from the want of reform, or by the disputes and difficulties which every attempt at reform must have created. A congress, therefore, to which each state sends a delegate, meets annually, considers the changes which any member of the Confederation may

propose, and decides by a majority. The parties to the Zollverein have relinquished their separate independence on two important administrative points,—commerce and finance. The Prussian tariff, which they have substantially adopted, though in many respects positively objectionable, is relatively good—far better than that of England,* with all its modern improvements, and, of course, still more superior to the barbarous systems of Russia and Austria. The members of the Union, who, when they joined it, were subject to a more liberal tariff than that which they now endure, have, up to the present time, found their new freedom of internal trade more than a compensation. The danger is, that if national jealousies, anti-commercial prejudices, and the desire to sacrifice the permanent interests of consumers to the temporary gains of landlords and producers, continue to spread and to increase in intensity, the tariff of the Zollverein may become more and more restrictive; and the population of the confederacy may be forced to use German manufactures, German wines, beet-root sugar, and European tobacco, to the exclusion of the far better and far cheaper products of England, France, and the Tropics.

The principal, but not the only object of the GERMAN CONFEDERATION or Bund, is security. The ancient Germanic Empire was not a confederacy, but one great feudal state, in which the imperial authority was universally recognised,

* Written in 1845.

though imperfectly obeyed. That authority, however, notwithstanding its weakness, had been eminently beneficial. Though it could not prevent wars between the states which admitted its supremacy, it much diminished them. It introduced, first by practice, and afterwards by law, the reference to arbitration of all disputes between these states. It created an imperial chamber as a court of appeal from the decision of the arbitrators; and it placed at the disposal of that court a large military force, contributed by the ten circles into which the Empire was divided. These institutions were the great sources and the great schools of international law. They afforded defence to the weak and redress to the oppressed. They enabled more than 300 petty states—all sovereign except their feudal vassalage to the Emperor, but none of them capable of resisting their powerful neighbours—to preserve their independence for centuries.

But the unity of the Empire was irreparably weakened by the Reformation. Had Charles V. embraced the doctrines of the Reformers, there can be no doubt that the whole of Germany would have followed his example. The public mind was so well prepared for those doctrines, that wherever they were favoured by the sovereign, they were eagerly adopted by the people; and even where the sovereign opposed them—as in Bavaria and in the hereditary dominions of Austria—it required centuries of oppression to eradicate them. Community of religion would have bound together the Emperor and his feudal subjects. The imperial crown might have become legally as well as

practically hereditary; the great fiefs might have been gradually reunited to it, as was the case in France; and Germany might have become one great Protestant empire.

But, unhappily for Europe, Charles V. and his immediate successors, with the doubtful exception of Maximilian II., were bigoted Romanists. Toleration was not recognised by the political morality of the sixteenth, or even of the seventeenth century. The Emperor thought lawful every means by which heresy could be suppressed. And when the imperial authority was employed in persecution, resistance ceased to be considered by Protestants as treason. For more than a century, from the league of Smalkald in 1530 down to the peace of Westphalia in 1648, a large portion of the Empire was in a state of warfare against its chief—sometimes unavowed, but more frequently open, and never intermitted. The provisions of the treaty of Westphalia, which put an end to this long contest, were unfavourable to the central power. By the eighth article of this treaty the Emperor relinquished the right, unless by the assent of the Diet, to declare war, to make peace, to bind the Empire by treaties, to raise troops or contributions, or even to garrison the existing fortresses of the Empire, or to construct new ones. And by the same article, each sovereign state of the Empire was declared to be independent in its internal concerns, and even as to its foreign relations—provided its measures were not hostile to the general body.

From this time the imperial power rested on traditional reverence, and on the preponderance among the German

States of the hereditary dominions of the House of Austria. But that preponderance was much diminished when the electors of Hanover, Brandenburg, and Saxony, acquired the Crowns of England, Prussia, and Poland; and still more by the sudden growth of Prussia, and the successful wars which the royal vassal waged against his feudal lord. The traditional reverence was impaired by the errors of a series of weak emperors, and at last destroyed by the follies and rapacity of a clever one. The constant endeavours of Joseph II. to trample on the rights of his own subjects, and to seize the dominions of his neighbours, and particularly his repeated attempts on Bavaria, showed that the imperial power, unless restrained by a strong public opinion, might be a formidable instrument of oppression and ambition. And, unhappily, in the latter part of the eighteenth century, public opinion had been so often outraged, that at length it had ceased to be sensitive. The only remark by a British minister on the first partition of Poland was, 'that it seemed a *curious* transaction.'

At length the day of trial arrived, and the Empire had to resist the revolutionary energy of France. A few months were enough to show that all its vigour, and almost all its coherence, were gone. On October 21, 1792, the French seized Mayence, and the next day Frankfort. On the same day the Diet met at Ratisbon to consider the state of their relations with France, and six months elapsed before the forms were gone through which were necessary to a formal declaration of war. But by this time its ill-connected parts had begun to separate. In the beginning of 1793

the elector of Bavaria signed with France a separate treaty of neutrality. The Duke of Wurtemburg soon afterwards made a similar proposal, which, though at first rejected by France, was at length accepted. In April 1795, the King of Prussia, as elector of Brandenburg, made a separate peace; and engaged for the neutrality of all the states on the north of the Main. This neutrality was immediately accepted by the Landgrave of Hesse Cassel, and soon afterwards by the states forming the circles of Swabia and Franconia. And in 1797, Francis II., finding the Empire practically reduced to his own hereditary dominions, signed, as Emperor, the treaty of Campo Formio.

That peace set the example of the hateful System of Indemnities—a system under which the greater powers settled their quarrels, by agreeing to divide and appropriate the territories of the weaker ones—a system under which a negotiation for peace inspired wider and juster alarm than a declaration of war. By the public articles of the treaty of Campo Formio, Austria ceded to France the Austrian Netherlands, and a portion of Lombardy; and France handed over to Austria Venice, Istria, and Dalmatia. By the secret articles, Austria engaged that the left bank of the Rhine, as far as the Meuse, should belong to France; and France engaged that Austria should be indemnified by the cession to her of the Salzburg territory, and a large portion of Bavaria.

In 1799, the war between France and the Empire was renewed; and in 1801, it was again suspended by a similar

arrangement, called the treaty of Luneville. By that treaty, and by the act of the Diet carrying it into execution, the whole left bank of the Rhine, and a further portion of the Austrian dependencies in Italy, became French; and the princes who lost by these cessions received in exchange forty-five out of the sixty-one free towns, and all the territories of the ecclesiastical sovereigns.

In September 1805, the war recommenced—Wurtemburg, Baden, and Bavaria siding with France, and Prussia remaining neuter. In the following December, it ended by the battle of Austerlitz and the peace of Presburg. By this peace, Austria relinquished to France the remainder of her Italian dominions, and divided between Wurtemburg, Bavaria, and Baden, the Vorarlberg, the Tyrol, and her Swabian territories. She acknowledged the Dukes of Wurtemburg and Bavaria as kings, and consented that they, and also the Duke of Baden, should possess their new dominions, and also their ancient ones, in full sovereignty. By virtue of this treaty—a treaty to which only France and Austria were parties—these sovereigns immediately abolished the representative constitutions of their states, and assumed despotic power over their own subjects, and over those of the princes of the Empire whose territories were surrounded by their own. To complete the picture of the political morality of Germany, we must add that, a few months afterwards, in April 1806, Prussia, the ally of England and of Hanover, by virtue of a convention with France, seized the Hanoverian dominions and annexed them to her own.

The German Empire was practically dissolved by the peace of Presburg, though it existed nominally for a few months longer. On August 1, 1806, Wurtemburg, Bavaria, Baden, Hesse-Cassel, and twelve other inferior members, formally detached themselves from the Empire, and formed the Confederation of the Rhine, under the Protectorate of France. Five days afterwards, on August 6, 1806, Francis, the fifty-fifth successor of Charlemagne, resigned the Crown which had been worn for more than a thousand years, and released from their allegiance all the electors, princes, and states, that still acknowledged his supremacy.

The act constituting the Confederation of the Rhine declared that the sovereigns of whom it consisted possessed their territories—including the interspersed dominions of the former princes of the Empire—in full sovereignty. So attractive was this bait that, when the Confederation was dissolved by the ruin of its protector, it included all Germany, except Prussia and Austria, and the portion incorporated in France. Out of about 350 sovereign states, not more than 38 remained. All the rest had been absorbed by France or by their immediate neighbours.

In 1814, when victory enabled the allied sovereigns to remodel central Europe, two propositions became obvious.

First, that the reconstruction of the Germanic Empire on its ancient basis was inexpedient, and probably impracticable. Impracticable, because the kingdoms and grand duchies which had arisen out of its ruins would have resisted the attempt to reduce them to feudatories; inexpedient, because that Empire had shown that it had not

cohesion sufficient to withstand the first shock of the compact and centralised power of France.

And, secondly, that to give perfect independence to its existing free cities, princes, and kings of the second order, would create a set of principalities still more unfit for defence against a common enemy than they had been when members of the Empire, and in most cases incapable even of keeping peace at home. No one ventured to propose to mediatise them all, and to partition Germany between the only German states that could be called really powerful, Austria and Prussia; and if such a suggestion had been made, it would have been stifled by the general indignation of Europe. The only remaining course was to connect them by a confederacy; and accordingly the sixth article of the treaty of Paris of May 1814, an article which fixed the destinies of perhaps a sixth of Europe, stipulates that 'the German States shall be independent, and united by a federal league.'

In the following autumn, the negotiations by which this vague stipulation was to be developed and effected began. Saxony, whose separate existence was then in question, was excluded from them. The right to conduct them was assumed by the other five Germanic kingdoms—Austria, Prussia, England (as representing Hanover), Bavaria, and Wurtemburg. We think it probable that neither Bavaria nor Wurtemburg would have been admitted to these conferences if Austria had been a free agent. But she had entangled herself by the secret articles of the treaties of Reid. These treaties between Austria and Bavaria, and

between Austria and Wurtemburg, bear date October 8 and November 2, 1813. Both, therefore, must have been negotiated, and the first was actually signed, between the battles of Dresden and of Leipsic. At that time, when the fate of Europe was trembling, Bavaria and Wurtemburg almost held the balance. Estimating their armies at 50,000 men—and they rather exceeded that number—their hostility or assistance made a difference to the allied forces of 100,000 men. Unfortunately, their cooperation was obtained a few days too late. The battle of Leipsic ended on October 18. On the 16th, the Bavarian army under Wrede began its march from Branau on the Inn, for the purpose of cutting off Bonaparte's retreat. Wrede reached Hanau on the 28th. Had he been two days earlier, he could have intercepted the French army at Gelnhausen, about twenty miles higher up on the Kinsig, where the only road runs between precipices on one side and a rapid river on the other. Under such circumstances the French might have been forced to surrender or disperse, and the war would have been finished in a week. As it was he had to meet them in the open fields before Hanau, and even then Bonaparte lost more than a third of his army before he burst through.

An ally capable of such services was to be purchased on his own terms; and the terms demanded by the King of Bavaria, and conceded by the treaty, were, absolute independence and full sovereignty. The treaty with Wurtemburg contained a clause in nearly the same words. In the face of these treaties it was impossible to treat the

Kings of Bavaria and Wurtemburg as mere subordinates. Their ministers took part in all the discussions in which the Act of Federation was framed; and as nothing was decided except by unanimity, they exercised a powerful and mischievous influence. All the provisions which tended to strengthen the federal authority, all those which would have protected the rights of the people of each state against its ruler, all that imposed duties on the sovereigns in favour of their own subjects or of the confederacy—in short, all that supported liberty and order against arbitrary authority, were proposed or supported by the three great powers, England, Prussia, and Austria, and opposed by their new and comparatively inconsiderable colleagues.

Fortunately, these discussions were recorded day by day as they occurred, and the record was published by Martens, who acted as secretary. It is one of the most valuable historical documents of that memorable period.* The following short outline is chiefly taken from it:—

At the first meeting of the conference, on October 16, 1815, Austria and Prussia presented a project, which they had agreed on as the basis of a new federal constitution; the object of which was declared to be the preservation to all classes in the German nation of external safety, and internal constitutional rights. It divided Germany into seven circles, over two of which Austria, over two Prussia, and over the remaining three Bavaria,

* Congrès de Vienne. Recueil des Pièces Officielles, 6 vols. Paris: 1816.

Hanover, and Wurtemburg were respectively to preside. The central government was to reside in a Diet, divided into two chambers, one consisting of the five presidents; Austria and Prussia having each two votes, and the three others each a single vote; the other consisting of the subordinate princes and the free towns. Each chamber was to decide by the majority of votes. The first chamber to sit permanently, and to have the exclusive management of the foreign relations of the Confederation; the other, to regulate, with the concurrence of the first chamber, its internal affairs. The management of the federal army, and the execution of the decrees of the Diet, to be entrusted to the presidents of circles; the purely German States to be incapable of making war, or peace, or alliances; and no member of the Confederation to be capable of engaging in war with any other. All their mutual disputes to be decided by arbitration, or by the higher chamber of the Diet, or by a federal tribunal. Every confederate state to receive a representative constitution, and the federal compact to declare the *minimum* of popular rights.

To this proposal Bavaria and Wurtemburg objected, almost *in toto*. They especially remonstrated against the provisions which deprived the German sovereigns of the power of making war, peace, or alliances, to those which proposed a federal tribunal, and to those which mentioned constitutional rights, proposed representative governments, and stipulated for a *minimum* of popular power. The King of Bavaria said, that he exercised over his people

sovereign rights, sanctioned by treaty, with which he would allow of no interference. The King of Wurtemburg, that he would acquiesce in no restriction on his powers as a sovereign—powers actually in his possession, and recognised by treaties. He was willing to refer his differences with other German States to arbitration; but would not submit to be dictated to as to his foreign policy, or as to his management of his own subjects. In particular he declared that, even admitting, which he denied, the propriety of inserting, in the federal act, a clause favourable to the universal introduction of representative constitutions, the time when such constitutions should be given to each state, and the amount of popular rights to be conceded, must be left absolutely to the discretion of its sovereign.* To which Prince Metternich, speaking in the name of Austria, orally answered—

That it was absolutely necessary that the minimum of such rights should be fixed under the act—That under the ancient Empire, the subjects of every German State had rights against their sovereign—That in some states these rights had been lately disregarded, and that such oppression must be rendered impossible for the future.†

The written answer of the plenipotentiaries of Hanover was equally decided.

The prince-regent of Great Britain and Hanover (they said) cannot admit that the late changes in Germany have given to its princes despotic power. The German States from time immemorial have enjoyed representative constitutions. How can these

* Recueil, vol. i. p. 100. † Ibid. p. 85.

constitutions have been destroyed by conventions made by their sovereigns with Bonaparte? What sovereign will say that he treated with a foreign ruler against his own subjects? Even if such a use could be made of the treaties, those which declare certain princes to be sovereigns (the allusion is to the secret articles of the treaties of Reid) do not thereby declare them to be absolute. The King of Great Britain is as much a sovereign as any continental prince; but the liberties of his people support instead of weakening his throne. They demand, therefore, that it be declared by a law of the Confederation that representative bodies be created in the states in which they do not now exist, and that their concurrence be requisite in the imposition of taxes, and in legislation; and that they be empowered to watch the administration of the public revenue, and to demand the punishment of public delinquents. They are ready to acquiesce in the general rule, that questions between a prince and his subjects are in the first place to be brought before the tribunal of the state; but in that case, the judges should be released *pro tanto* from their allegiance, and engage to decide according to law. And in all cases there must be an appeal from the individual sovereign to the Diet. In the present state of men's minds (they add) less than this will not produce content or even tranquillity.*

Austria, Prussia, and Hanover appear to have attacked the obstinacy or ambition of Bavaria and Wurtemburg with every diplomatic weapon. They received the hearty support of the German States not admitted to the conference. A memorial signed by the plenipotentiaries of these states, dated November 16, 1814, urges the necessity of putting an end to all arbitrary authority, by the universal introduction of representative constitutions, by investing the representative bodies with four powers, nearly resembling

* Recueil, vol. i. p. 101.

those which Hanover had required—namely, taxation, legislation, superintendence of the public expenditure, and representation of grievances—by a federal tribunal, by a federal army, and by a central authority representing the German nation, and controlling all its members.* Even Russia was called to aid the cause of liberal principles. Count Nesselrode, in his master's name, declared his warm approbation of the proposed basis, and particularly of the provisions for the creation and maintenance, by the Confederation, of representative constitutions, the guardians of liberty and property.

> Germany (continued the Emperor of Russia) will not enjoy tranquillity until the abuses of authority are prevented, and the rights of all are fixed and protected by powerful and liberal institutions. His Imperial Majesty, therefore, will support the propositions of Austria, Prussia, and Hanover, by the strongest expression of opinion, and if necessary by actual intervention.†

The royal recusants were proof against menace, as well as against argument. They ridiculed the notion of a German nation, clung to the treaties of Reid, and protested that their duties towards their subjects and the honour of their Crown prohibited them from relinquishing a particle of their irresponsible sovereignty. The King of Wurtemburg quitted Vienna abruptly, and the conference was broken up on November 16, and never renewed in the same form.

In February 1815, the minor princes and free towns

* Recueil, vol. ii. p. 33.

† See this remarkable paper. Recueil, vol. i. p. 329.

requested that it might be reassembled. This request was supported by the Prussian plenipotentiaries, in a note in which, after admitting that the original scheme was in some respects capable of modification, they declared their firm conviction that three provisions were absolutely essential; first, a strong federal army; secondly, a federal tribunal; and, thirdly, the establishment and security of representative constitutions.*

It is difficult to say what would have been the result if Napoleon had remained in Elba. Perhaps Germany would have continued a mass of independent states, with no bond of union and no common superior. Perhaps it would have split into two great confederacies, one under the Protectorate of Austria, and the other under that of Prussia. Or, more probably, the resistance of the Kings of Wurtemburg and Bavaria—a resistance in which the people of neither country sympathised—would have been gradually overcome; the basis of the original scheme would have been adhered to; and Germany would have obtained an external force and an internal freedom which are not supplied by the existing Act of Confederation. But during the hundred days, expedition was more important than completeness. It was probable that, within six months, the countries between the Rhine, the Elbe, and the Danube, would be the seat of war; and experience showed how fatal that war would be if it caught them discontented or even disquieted. No time was to be lost,

* Recueil, vol. iii. p. 129.

and no time was lost. Napoleon's return was known in Vienna on March 12, 1815, and the Act of Confederation was signed on June 8 following.

The initiative was taken as before by Prussia. On May 1, her plenipotentiaries submitted to Prince Metternich a project, of which the material points were these:—That the division of Germany into circles should be abandoned; that the higher chamber of the Diet should contain a few sovereigns as permanent members; but that all the others should be admitted in rotation. The constitution of the second chamber is not stated. It was probably intended to consist of representatives of all the members of the Confederation. All executive acts were to be performed by the first chamber, taxation belonged to the second, and both were to concur in legislation. A federal tribunal was to be established to decide originally all questions between state and state, and, by appeal, all between the subjects of a state and its sovereign. In each state the judges to be irremovable except by formal judicial sentence, and released, on all questions between their own sovereign and his subjects, from any oath of obedience. Existing representative constitutions to be maintained; and, where they did not exist, to be created, and every class of citizens to take part in them. Religion and the press to be perfectly free, subject as to the latter to the responsibility of authors and printers, and to the inspection by the police of periodical writings and pamphlets.*

* Recueil, vol. iv. p. 201; vol. v. p. 29.

Austria proposed a counter project, under which the Diet was to consist of only one chamber, and no mention was made of the liberty of the press. The establishment of a federal tribunal was reserved for the Diet; but the clause requiring the maintenance or introduction of representative constitutions under the protection and guarantee of the Confederation, was retained. Out of these two projects was formed the plan submitted by Austria and Prussia to the new conference, and with some modifications adopted. That conference assembled on May 23. It was far more numerous than the previous one, containing plenipotentiaries not only from Austria, Prussia, Hanover, and Bavaria, but also from Saxony, Hesse, Baden, the Netherlands, and Denmark, and from the minor princes and free towns. Wurtemburg alone did not appear.

The project was debated in ten conferences. The following is an abstract of the federal act which was the ultimate result. It consists of twenty articles; the first eleven are termed general provisions, the last nine special provisions. By the three first, the German States unite themselves in a perpetual Confederation, consisting of thirty-eight members.* The 4th, 5th, 6th, 7th, 8th, and 9th articles create the Diet by which the affairs of the

* The six most important members are, Austria, Prussia, Saxony, Bavaria, Hanover, and Wurtemburg. Next come Baden, Hesse Cassel, Hesse Darmstadt, Holstein, and Luxembourg; then Brunswick, Mecklenburg-Schwerin, and Nassau. The four free towns, Lubeck, Frankfort, Bremen, and Hamburg, and twenty inferior principalities, whose polysyllabic names are generally unknown to the English reader, form the remainder.

Confederation are to be managed. The Diet sits, to use an English nomenclature, either as a house or as a committee of the whole house. In the first case, the eleven principal states—that is, from Austria down to Luxembourg inclusive—have each one vote, and the twenty-six others have six votes among them. But when it sits as a committee, the six most important states have each four votes, the five next three votes each, the three next two votes each, and the twenty-four others have a vote apiece. The eleven principal states, therefore, have eleven votes out of seventeen when the Diet sits as a house, and thirty-nine out of sixty-nine when it sits in committee. The Diet *in committee* cannot discuss; it merely accepts or rejects. The majority must consist of two-thirds, and on questions relating to the fundamental laws or organic institutions of the Confederation, unanimity is requisite. The Diet *as a house* votes according to absolute majority, Austria having a casting vote. It prepares all questions for the committee, and decides as to the cases in which a reference to the Diet sitting in committee is necessary. The questions as to which unanimity is already mentioned to be requisite, must be decided by the Diet in committee. Article 10 declares, that the first duty of the Diet, on its meeting on September 1, 1845, shall be the enactment of the fundamental laws of the Confederation, and its organisation for the management of its foreign, military, and internal affairs. By article 11, the confederates engage that they will contract no alliances which may endanger the Confederation or any of its members—will not treat sepa-

rately with any power at war with the Confederation—will refer all their mutual differences to the Diet or to arbitration, and on no pretext whatever will make war on one another.

Of the special provisions, the only important ones are the thirteenth, which affirms that a representative constitution will take place (*wird Statt finden*) in every state; the sixteenth, which declares that in no state shall differences as to Christian faith affect civil or political rights; and the eighteenth, which provides that the subjects of each state shall enjoy throughout the confederacy the right to purchase land, to acquire and take away personal property, to remove from their own state to any other willing to receive them, and to enter its civil and military service.

It will be observed that all allusion to a federal tribunal, or to any other mode of redressing or even hearing the complaints of subjects against their sovereigns, is omitted; and that the promise, if it can be called a promise, of representative constitutions, is expressed in terms so vague as to be valueless.

The last alteration made in this clause shows the alarm which it excited in the absolutist party. It had been pared down to these words—'*In allen Bündesstaaten* soll *eine landstaendische Verfassung bestehen*,'—which may be translated, 'a representative constitution *shall* be *established* in all the Confederate States.' Bavaria objected to the imperative future *soll*, answering to our *shall*, and to the permanence of the word *bestehen*, and required

soll to be changed into *wird*, that is, *shall* into *will*, and *bestehen* into *stattfinden*—that is, *established* into *take place*.*

These omissions were not submitted to without a struggle. On the first discussion, the princes and free towns required that the right of the representative bodies to concur in taxation and legislation, and to represent their grievances, should be secured.† The same demand was made by Mecklenburgh ‡ and by Luxembourg § (the King of Holland)—'What would have been the value,' said his plenipotentiary, 'of a promise by King John to the people of England, that they should have a charter and a parliament, without any stipulation as to the contents of the one or the powers of the other?' Austria, Prussia, Saxony, Hesse Cassel, Oldenburgh, Lubeck, and all the Saxon principalities, protested formally against the omission of a federal tribunal. The plenipotentiaries of Hanover declared it to be the earnest desire of the prince-regent that the Confederation should not be a mere political alliance, but a union of the whole German nation; that he well knew that neither the wants nor the wishes of the people would be satisfied until they obtained representative constitutions guaranteed by the union, and supported by a federal tribunal; but that, convinced that these objects could not be immediately attained, and that an imperfect confederacy was better than none, he authorised them to sign the treaty; and to accompany that signature by a

* Schoell, *Traités de Paix*, vol. ii. p. 307.
† Recueil, vol. v. p. 100.
‡ Ibid. vol. ii. p. 270.
§ Ibid. p. 161.

declaration that he never would relax his efforts until its defects should be supplied.*

Thirty years have now passed since the Act of Confederation was signed, and we can form some judgment how far it has effected its proposed objects—'the external and internal security of Germany, and the inviolable independence of each separate state.' During that period, Germany has certainly been preserved from aggression. But so has been all Europe north of the Alps. We cannot ascribe to the Confederation the safety of Germany during universal peace. How far, then, has the Confederation succeeded in maintaining internal tranquillity? It has not prevented a royal revolution in Hanover, or popular revolutions in Saxony, Hesse Cassel, and Brunswick. It has not prevented the King of Hanover from trampling down the liberties of his subjects; or the people of Hesse Cassel and Brunswick from deposing their sovereigns; or the mobs of Leipsic and Dresden from changing the constitution of Saxony, and forcing their King to abdicate, and his immediate successor to resign. It promised liberty of the press: it has destroyed it throughout the whole of Germany. It promised improvement in the commercial relations of the Confederate States: it has abandoned them to the Zollverein. It promised to every German free passage from state to state: and even now a Bohemian cannot cross the mountains which separate him from Saxony, without suing at Vienna for a passport,

* Recueil, vol. v. p. 266.

and obtaining it, if he obtain it at all, at considerable expense, and after two months' delay. It promised representative constitutions to every state: a whole generation has passed away, and still, in the greater part of the confederacy, there are none. Those which exist are subject not only in their acts, but even in their deliberations, to the *surveillance* and control of the Diet; they are forbidden to make the granting supplies conditional on the redress of grievances; they are forbidden to enact laws which may be detrimental to the confederacy; and the Diet declares itself to be the sole judge of what is to be held detrimental. What will be the tendency of its decisions, may be inferred from the principle laid down by the first article of its decree of 1832—'That all political power ought to be concentrated in the sovereign of each state, and that each sovereign is not only justified, but actually bound by his duty to the confederacy, to reject any proposal inconsistent with this principle.' *

The result has been external calm, and internal fermentation. The outbreaks through which the popular indignation exhaled, during the first twenty years of the confederacy, have ceased in the hopelessness of redress. But a bitter enmity to the existing despotic institutions is general; and the popular leaders, deprived of the experience and the responsibility which both inform and control those who are allowed to take part in the real management of the affairs of their country, have been

* See Decree of the Diet, June 28, 1832.

guilty of all sorts of democratic and anarchical extravagances. Never has there been a prophecy more thoroughly fulfilled than that above mentioned of the Emperor Alexander, when he foretold that Germany would not rest satisfied with a constitution which did not oppose to the abuses of power 'strong and liberal institutions.'

It may appear questionable whether states, subject to this amount of control, are individually independent, or merely members of one empire, of which the Diet is the aristocratic ruler. The original Act of Confederation certainly left them independent; but the fundamental laws subsequently passed by the Diet allow, to the purely German States, little real sovereignty. We have alluded to some of those which gave a right of interference in their domestic concerns. The management of their foreign relations is almost taken out of their hands by the decree of 1820. By the thirty-first article, any foreign state may complain to the Diet of the conduct of a member of the confederacy; and the Diet, if the complaint be just, is required to force the offending state to make immediate and full reparation. And, generally, in case of a controversy between any member of the confederacy and a foreign state, the Diet is to examine into the question, and to require, and if necessary to force, the confederate state to accept or to render the satisfaction that the Diet may think reasonable.

Still we apprehend that the different states must be considered legally sovereign, whatever be the practical subserviency of Hohenzollern-Hechingen, with a territory

of less than seven square German miles, an army of 345 men, and a revenue of 13,000*l.* a year; or of Lichtenstein, with less than three square miles for its territory, fifty-five men for its army, and 2,200*l.* a year for its revenue.

In the first place, no alteration can be made in the fundamental laws of the Confederation, except by unanimity. Lichtenstein may oppose its veto to the wish of its thirty-seven confederates. In the second place, the members of the Diet are merely the delegates of their respective sovereigns, speaking in their names and obeying their orders.* Both these provisions are inconsistent with the notion of the Diet's being a supreme power governing the confederacy as one nation, and acting for the general benefit of the whole, not the individual interests of a single member. And, lastly, which is the decisive mark of a mere confederacy, the inhabitants of each state own allegiance only to their immediate sovereign. The Diet, says the decree of 1820, article thirty-two, proceeds against sovereigns, not against individuals. Resistance to its orders, or to its executive, is not treason. Under the feeble rule of the ancient Germanic Empire, the separate states possessed more real and less legal independence than the members of the present confederacy. Resistance to the Emperor was indeed always a crime; but in the many cases in which he was not strong enough to punish, it was not a folly. Resistance to the Diet can

* Decree of June 3, 1820. Art. 8.

never be a crime, but in the weaker states it must always be a folly.

The AMERICAN UNION is placed on the limit which separates a confederacy from an incorporation. It is either the strictest alliance of independent states, or the loosest aggregation of subordinate municipalities. The decision, whether it belongs to the one class or to the other, leads to important results.

If the Union be an incorporation, if the people of the United States form one nation, each individual citizen owes allegiance to that nation. A combination among a portion of the citizens to withdraw from that allegiance, and either to form themselves into an independent sovereignty, or to connect themselves with any other sovereign power, would be a treasonable conspiracy—a conspiracy for which every person engaged in it would be personally responsible.

On the other hand, if the Union be a mere alliance—if the states of which it is constituted are distinct nations, each sovereign and independent, though bound to the others by treaty—there is no national authority, beyond the authorities of each state, to which allegiance can be due. If any one state shall think fit to separate from the Union, it may do so. The seceding state will be guilty of a breach of treaty; the remainder of the confederacy will be entitled to exercise against it the rights of war, and, if successful, the rights of conquest, but cannot treat any of

its subjects as criminals. In fact, the subjects of the seceding state would be legally criminal if they refused to obey its orders, though in opposition to those of the federal authority.

Nor is there a mere speculative enquiry, like the question as to the grounds on which every supreme government is entitled to obedience. The doubt here raised is, which is the supreme government? In case of conflict between the federal and local authorities, to which of them is obedience due? As this is a question on which the most eminent statesmen and lawyers in America irreconcileably differ—on which even the framers of the Union were not agreed—it would be presumptuous in us if we were to give an opinion, without at least supporting it by an outline of the facts and arguments which have convinced us.

For this purpose, we must consider not merely the Articles of the Union, but the previous history of the people by whom they were adopted. We say the people, for the inhabitants of the United States have always been one people. The citizen of one state never was an alien in another. Under the British rule, all were fellow subjects, all obeyed the same sovereign, all spoke the same language, all looked back to the same ancestors, nearly all professed the same religion; and, what is perhaps the most important link, all were governed by the same common law. The ruling power in all was a house of representatives elected by a wide suffrage, a council, and a governor. Besides this general resemblance between colony and colony, the different classes in each colony were

little distinguished by manners, wealth, or habits. In the British islands, the English, Scotch, Welsh, and Irish have each a distinct national character, which is again modified by the accidents of rank, wealth, trade, and profession. In the colonies, nobody was poor, and nobody was very rich; nobody was grossly ignorant, and very few were highly educated. The only rank was official, and therefore temporary; and it is probable that, throughout that vast territory, there was a nearer approach to equality, a flatter level, both material and personal, than has ever existed before, or will exist again in a numerous people; and even now, when many causes of inequality have been at work for seventy years, M. de Tocqueville remarks, that there is more difference in civilisation between Normandy and Brittany, which are united by a bridge, than there is between Maine and Georgia, which are separated by fifteen degrees of latitude.

When the weakness of the British Parliament, yielding to the folly and obstinacy of the British King, drove these prosperous and loyal colonies to resistance, it was not the states but the people who took the lead. The delegates who met in Congress in 1774, were appointed not by the legislature, but by the people. In nearly their first act, their petition to the Crown of November 1774, they describe themselves as his Majesty's faithful subjects of the colonies of New Hampshire, &c., on behalf of themselves and of the inhabitants of those colonies; and they ask redress 'in the name of the faithful people of America.' They immediately assumed powers which the

state legislatures were incapable of granting to them, and which could have proceeded only from a people restored by revolution to its original right of self-government. Some of their enactments, indeed, could not have been executed even by a revolutionary despotism. They forbade the importation of British commodities, and then enacted that all manufactures should be sold at a reasonable price, so that no undue advantage should be taken of a scarcity of goods.

The Congress which met the next year, though similarly appointed, certainly adopted the federal instead of the national principle. One of their first acts was to frame the Articles of Confederation of May 20, 1775. By these articles the united colonies entered into a firm league and friendship with each other, to cease on reconciliation with Great Britain, but, on failure thereof, to be perpetual. Each colony to retain its own laws and constitutions, or to amend them as it might think fit: To send annually delegates to Congress in the proportion of one to every five thousand polls: Congress to meet in each colony by rotation: Each delegate to have a vote, and, if necessarily absent, by proxy: One-half to be a quorum: Congress to determine on foreign relations, reconciliation with Great Britain, settling disputes between colony and colony, the planting new colonies, general commerce and currency, and military defence: The expense to be supplied by each colony, in proportion to its male polls between sixteen and sixty years, by taxes to be raised and levied according to its own laws: Congress to be at liberty to propose

amendments, binding when approved by a majority of the colonial legislatures.

This rude sketch of a confederacy was not ratified by the people or by the provincial legislatures, and does not appear to have been acted on. Many writers on the history of the American constitution, among whom are Kent and Story, scarcely allude to it.

The Congress of 1776 was equally federal. It declared 'the United Colonies to be free and independent states, and as such to have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts which independent states may of right do.' It is remarkable that not one of the sovereign powers thus enumerated had, at that time, been exercised, or has since been exercised, by any one of the states which here declared themselves entitled to all of them.

On October 4, 1776, the Congress signed new Articles of Confederacy. They differed from those of 1775 principally in the following points. First, the several states are prohibited from entertaining any relations with foreign powers, or contracting any alliances between one another, except by consent of Congress. Congress to meet always at Philadelphia, to consist of delegates sent by the different states, and revocable at will; the delegates of each state to have only a single vote. No delegate to be appointed for more than three years out of six, or to hold any paid office, federal or provincial. For all important questions the concurrence of nine out of the thirteen states to be necessary; and for all others, except a mere

adjournment from day to day, the concurrence of seven. Lastly, the Articles of Confederacy are to be altered only by the unanimous vote of Congress, ratified by the legislature of each of the states.

The Congress having in the Declaration of Independence admitted the sovereignty of the states, its members acted in the preparation of this treaty merely as ambassadors, and not even as plenipotentiaries. As soon as it was completed it was sent to the states for ratification; and it was not until 1781, nearly at the close of the revolutionary war, that the final ratification was obtained.

On the whole, we are inclined to think the Confederation of 1775 rather less objectionable than that of 1776. A smaller quorum was required, and a bare majority of that quorum was sufficient. Under the Confederation of 1776 the mere absence of the delegates from six states often paralysed the whole Union; and even when those of nine were assembled, not merely the opposition of a single state, but its refusal to vote, or the neutralisation of its vote by a difference of opinion amongst its delegates, prevented the requisite concurrence. The exclusion from Congress of persons holding office, and the refusal of re-eligibility, mark the progress of democratic jealousy; and the declaration, that the terms of Confederation should not be altered except by unanimous consent, made them in fact, as far as words could make them so, unalterable, since every compact whatever is alterable by the unanimous consent of all the parties to it.

The United States may be said to have been bound by

this treaty for twelve years, the Articles of Confederation having been proposed by Congress in 1776, and from that time acted on, though not adopted, by a majority of the states, until the summer of 1778; and the present constitution, which superseded them, having obtained a similar ratification in the summer of 1788. Of these years, six were spent in war, terminated by the peace of 1782. While the contest was raging, the confederacy was pressed together by England on one side and France on the other. But the looseness of the bond let in destructive elements, which kept it always on the verge of dissolution. As a general rule, Congress acted not on individuals but on states. It could require supplies of men and of money from the members of the Union, but it was forced to leave to the local legislatures the task of raising them. If they chose to enlist their men only for a year, or even for a less period; if they neglected to pay, or to clothe, or to arm them; if they raised their supplies of money by issuing paper without providing for its convertibility, or limiting its amount; or if, as was frequently the case, they neglected altogether to comply with the requisitions of the central authority, that authority was powerless. The defaulting state was sovereign. It had committed a breach of treaty, for which the only remedy was war; and the attempt to apply that remedy would have produced immediate ruin to the whole confederacy.

On looking through Washington's correspondence it will be seen, that not a single year passed in which he did not fully expect that, unless the conduct of the states was totally

altered, or France would supply the money and the troops which they neglected to furnish, the resistance to Great Britain must cease. In a letter to Congress, dated August 20, 1780, he thus condenses the history of the first five years of the war:—

If we had formed a permanent army, we never should have had to retreat, with a handful of men, across the Delaware, in 1776, trembling for the fate of America, which nothing but the infatuation of the enemy could have saved; we should not have remained all the succeeding winter at their mercy, with sometimes scarcely a sufficient number of men to mount the ordinary guards, liable at every moment to be dissipated if they had only thought proper to march against us (1777); we should not have been under the necessity of fighting at Brandywine with an unequal number of raw troops, and afterwards of seeing Philadelphia fall a prey to a victorious enemy; we should not have been at Valley Forge with less than half the force of the enemy, destitute of everything, in a situation neither to resist nor to retire (1778); we should not have seen New York left with a handful of men, yet an over-match for the main army of these states (1779); we should not have found ourselves this spring (1780) so weak as to be insulted by 5,000 men, unable to protect our baggage and magazines—our security depending on a want of enterprise in the enemy; we should not have been, during a greater part of the war, indebted for our safety to their inactivity.*

This was no ebullition of temporary disappointment. Washington's contemporary letters paint, in still darker colours, the dangers to which he was exposed through the weakness of Congress, and the misconduct of the states.

In the latter part of 1776, for instance, when nothing but the Delaware was between him and the superior army

* Sparks' *Washington*, vol. vii. p. 162.

of General Howe, every letter contains anticipations of immediate defeat. Thus, on December 12, he writes—'There can be no doubt that they (the enemy) will pass the Delaware as soon as possible. Happy should I be if I could see the means of preventing them. At present I confess I do not.'* A week after, on the 20th, he says—'I think the design of General Howe is to possess himself of Philadelphia, and I do not see what is to prevent him, as ten days more will put an end to the existence of our army.' †

It was in these desperate circumstances, on December 25, when his army was within four days of disbanding, that Washington ventured on the almost desperate expedient of crossing the river at Trenton, with his handful of ill-disciplined troops, and attacking the army before which he had been for three months retreating. In his confidential orders to the officers who were to take part in the movement, he does not palliate its danger; 'but necessity,' he adds, 'dire necessity, will—nay, must—justify an attack.'‡ The British general was found as unfit for defensive as he had been for offensive war. The apparently hopeless enterprise succeeded; the British army retreated almost in panic to Brunswick and New York, and Washington intrenched himself in Morristown, at about thirty miles' distance. He did not feel himself, however, much relieved by his victory.

* Sparks' *Washington*, vol. iv. p. 211.
† Ibid. p. 233. ‡ Ibid. p. 241.

Not three weeks after, on January 19, 1777, he tells the Pennsylvanian authorities that—

The army is so much reduced since we left Trenton, and the many that will be discharged in a few weeks will so weaken our forces, that it will be impossible to oppose the enemy with success. As I cannot expect our situation to be long a secret to the enemy, there is no doubt that they will take advantage of our weakness.*

And to Congress he writes—

The fluctuating state of an army composed chiefly of militia, bids fair to reduce us to the situation in which we were some time ago, that is, of having scarcely any army at all. One of the Philadelphia battalions goes home to-day, the other two remain a few days longer by courtesy. The time for which Miflin's brigade came out is expired, and they stay from day to day by solicitation, their number much reduced by desertions.†

A week after, on the 26th, he says—

The enemy must be ignorant of our numbers, or have not horses for their artillery, or they would not leave us undisturbed.

Soon after, on March 2,‡ he estimates General Howe's force at 10,000 men, well disciplined and well appointed; his own at 4,000, all raw, badly officered, and under no government; infers an attack to be imminent; and fears that, if it take place while the relative condition of the two armies is unaltered, 'the game is up.'§ On April 12 he writes to his brother—

To my great surprise we are still in a calm; how long it will, how long it can remain, is beyond my skill to determine. That it has continued much beyond my expectation, is certain. But

* Sparks' *Washington*, vol. iv. p. 282.
† Ibid. p. 283.
‡ Ibid. p. 301.
§ Ibid. p. 314.

to expect that General Howe will not avail himself of our weak state, is to say that he is unfit for the trust reposed in him: the campaign will be opened, and without men on our side. The ridiculous and inconsistent orders given by the executive powers in some of the states, and even by the officers therein, are scarcely to be thought of with patience. It would seem as if to harass the troops and delay their juncture, were the ends in view.*

The calm, however, continued till the end of June, when General Howe, having now allowed Washington to collect the appearance of an army, marched a few miles towards him, and then returned to Staten Island and New York. Washington considered this retreat 'as a peculiar mark of Providence.' † At length, on July 23, he embarked his troops, according to Washington's expectations and fears, to proceed up the North River, and join General Burgoyne in his advance from Canada—but really to go to the south and invade Pennsylvania by the Chesapeak. Washington proceeded by land to meet him, marched through Philadelphia on August 24, was beaten at Brandywine on September 11, and again at Germanstown on October 4; and in the beginning of December, intrenched himself at Valley Forge, on the Schuylkill, about twenty miles from the British head-quarters at Philadelphia.

In these positions the two armies remained till the middle of the following July. So similar was the sequence of events, that Washington's letters from Valley Forge are often almost copies of those written in the preceding year from Morristown. Thus, on December 23 he tells Congress that—

* Sparks' *Washington*, vol. iv. p. 387. † Ibid. p. 482.

Unless some great and capital change suddenly takes place, his army must inevitably be reduced to one or other of these three things—starve, dissolve, or disperse; that three or four days of bad weather would prove their destruction; that out of his whole force of 11,000 men, 2,898 are in camp unfit for duty, because they are barefoot and otherwise naked, besides a number confined in the hospitals for want of shoes, and others in the farmhouses on the same account, and that for want of blankets many are obliged to sit up all night by fires.*

In the following February, one of his officers, General Varnum, says, 'The situation of the camp is such, that, in all human probability, the army must shortly dissolve.' † Washington himself, writing at the same time, anticipates a general mutiny and desertion.‡ In the March following, he desires the Congress to estimate the temper of the army from the circumstance, that within the last six months between 200 and 300 officers had resigned their commissions; and that the supplies of men, said to have been forwarded to him from Virginia and North Carolina, from desertion and other causes, had dwindled to nothing.§ On April 10, he complains to Congress that, from want of proper provisions, the officers are mouldering away; that scarce a day passes without the resignation of two or three commissions; that those who go on furlough do not return; and that no order, regularity, or care of the men, or of the public property, prevails.‖

Two years afterwards, on April 3, 1780, we find neither the temper nor the condition of the army improved.

* Sparks' *Washington*, vol. v. pp. 197–9.
† Ibid. p. 240.
‡ Ibid. p. 239.
§ Ibid. p. 296.
‖ Ibid. p. 313.

There never (he says) has been a stage in the war in which the dissatisfaction has been so general or so alarming. Some states furnish their troops pretty amply, others provide them with some necessaries, others do little or nothing at all. The officers and men compare circumstances. The officers resign, and we have now scarcely a sufficient number left to take care even of the fragments of corps which remain. The men have not this resource; they murmur and brood over their discontent.*

On May 28, he says—

Unless a system very different from that which has long prevailed be immediately adopted throughout the states, our affairs must soon become desperate beyond the possibility of recovery. Indeed, I have almost ceased to hope.†

No such change, however, took place; and a few months after we find him resting solely on the hope of assistance from France. 'One of two things,' he writes to Franklin on October 11, 1780, 'is essential to us—peace, or the most vigorous aid of our allies.' ‡ On November 20, he says, 'Congress will deceive themselves if they imagine that the army can rub through a second campaign as the last.' § On January 7, 1781, he informs the states, that under the existing system it will be vain to expect from the troops another campaign.‖ On January 15, he states to Colonel Laurens his belief, that without an immediate and ample succour in money, though the states may make a feeble and expiring effort, the next campaign will in all probability be their last.¶ On April 9, he tells Laurens that the predictions of his last letter are becoming verified.

* Sparks' *Washington*, vol. vii. pp. 13, 14. † Ibid. p. 58.
‡ Ibid. p. 24. § Ibid. p. 300. ‖ Ibid. p. 355. ¶ Ibid. p. 371.

We cannot (he says) transport provisions to the army, because we cannot pay the teamsters. Our troops are approaching fast to nakedness, our hospitals are without medicines, our sick without nutriment, our works at a stand, and the artificers disbanding; in a word, we are at the end of our tether. Without foreign aid our present force, which is but the remnant of an army, cannot be kept together this campaign, much less will it be in readiness for another.*

The money thus earnestly implored was obtained, but the next year the distress had returned. On May 4, 1782, in a circular to the governors of the different states, he asks—

Under the present plan of non-compliance with requisitions for men and supplies, how is it possible to continue the war? If the states will not impose, or do not collect and apply taxes for the support of the war, the sooner we make terms the better; the longer we continue a feeble and ineffectual war, the greater will be our distress at the hour of submission.†

Fortunately for the greatness, though perhaps not for the morality or the happiness of America, the war had, by this time, become unpopular in England. On February 27, 1782, the Commons addressed the Crown against the continuance of hostilities. On March 20, Lord North resigned, and though the preliminaries of peace were not signed until November, the general expectation of its conclusion prevented any active military operations on either side.

On looking back at this memorable contest, three conclusions appear to us to be irresistible. First, that such

* Sparks' *Washington*, vol. viii. pp. 6, 7. † Ibid. p. 286.

was the incapacity and misconduct of Congress and of the States, that nothing but the extraordinary military and moral qualities of Washington saved them from ruin. Secondly, that even Washington could not have saved them, if the British commanders had acted with ordinary skill and courage. And, thirdly, that neither Washington's merits nor the British demerits would have enabled the United States to conquer their independence, if France had remained neutral. And we are inclined to believe that such was the exhaustion of both France and America, that if England had been willing, as there can be no doubt that she was able, to continue the war for a couple of years longer, she might have concluded it triumphantly. Whether that would have been, on the whole, a good or an evil is a more difficult question.

Weak as the Federal tie was during the war, it became still more feeble after the peace. There was not a state in which individuals, powerful from their position, and bodies powerful from their numbers, were not anxious to break it. The expenses of the war had been supported chiefly by loans, and by the issue of a paper currency, so profuse that it had become almost valueless. The debtors formed of course the numerical majority in every state, and in almost every state the numerical majority was omnipotent. Congress required the States to tax themselves to secure the loans and redeem the paper money. They not only refused to obey the requisition, but actually passed laws enabling the valueless paper money to be

tendered in payment of debt; forbidding any difference between paper and specie; and, in one state, requiring every man to swear that he would sell at the same price for the one as for the other; any contravention to be punished as a case of wilful and corrupt perjury. Other states passed acts inconsistent with the treaties with England and France; others entered into a commercial war of hostile regulations; and others were on the brink of a real war about boundaries and jurisdictions. Many of the leaders felt that their importance depended on the sovereignty of their state. If New York were a nation, its governor was a sort of king. If it were a mere province, he was scarcely more than a lord mayor.

At length, however, the evils arising from the impotence of Congress, and the folly and tyranny of the local legislatures, became intolerable. In 1787 Congress recommended the States to appoint commissioners to revise the Articles of Confederation, and to propose alterations rendering the Federal constitution adequate to the exigencies of government and the preservation of the Union. The people of every state except Rhode Island appointed commissioners. They met in May 1787, and after a discussion of four months, with closed doors, produced the seven original Articles of the present constitution.

Under this constitution, the supreme Federal power—instead of being concentrated in one assembly, as it had been under the former confederacy, and as it is now in the German and Swiss confederacies—is divided into three branches, legislative, executive, and judicial; the legis-

lative and executive functions being, however, kept less distinct than is usually attempted in written constitutions.

The legislative power is vested nominally in a House of Representatives and a Senate, but really in those two Houses and a President. Both the House of Representatives and the Senate are elected by the States; but in the Senate each state has two members, and no more, and they are elected by the State legislature: the representatives are elected by the persons who elect the popular branch of the State legislature, and the number returned for each state depends on its population. Delaware has now only one member, New York thirty-four.

The Senate, therefore, is a Federal, the House of Representatives a national, institution. That senators and representatives must be inhabitants of the states by which they are chosen, is a Federal mark common to both. The Senate exercises judicial, executive, and legislative functions. It tries impeachments, and its concurrence is necessary to treaties, and to the appointment of some high officers. The representatives have no judicial powers, nor any that are strictly executive, except that war must be declared by an Act of Congress. The most important powers of the two Houses are those which enable them to impose and collect taxes, to borrow money, to regulate commerce, to naturalise, to grant patents, to create national tribunals, to coin and regulate money and punish forgery, to fix the standard of weights and measures, to raise, support, and regulate a military and naval force, to dispose of the territory of the United States, and to

admit new states into the Union; and to make all laws which may be necessary for giving effect to the powers granted by the constitution. The representatives sit for two years, the senators for six.

The President is appointed by electors nominated by the States, each state appointing a number equal to its senators and representatives in Congress. This is a national arrangement, as it proportions the influence of each state to its population. New York having two senators and thirty-four representatives, now appoints thirty-six electors: Delaware having two senators, but only one representative, only three. But if no person have a majority of the whole body of electors, the choice devolves on the House of Representatives—voting, however, not by number but by states, which is of course a compromise in favour of the Federal principle. The President holds office for four years, but is re-eligible—is Commander-in-Chief of the army and navy, represents the Union in its foreign relations, makes treaties which require, however, the ratification of the Senate, and has a suspensive *veto* on all the proceedings of Congress. His great influence, however, arises from his powers of appointing and removing national officers. The constitution enables him to nominate to the high diplomatic and judicial offices, but gives to the Senate a negative, and enables Congress to vest in him alone all other appointments—a power which Congress has exercised so liberally, that he now enjoys nearly the whole patronage of the Union. Still more extensive is his power of removal. It extends not merely to the offices within

his absolute gift, but even to those as to which the Senate has a veto; and, as it is not restrained by public opinion, it places the whole official world at his mercy.

The judicial power of the United States is vested in one supreme court, and in such inferior courts as Congress may establish. Their judges hold their offices during good behaviour—nearly a solitary exception from the general rule. Their jurisdiction extends to all questions as to the construction of the constitution; to all cases arising under the laws and the treaties of the United States; to all admiralty and maritime cases; to controversies in which the United States are a party; to those between two or more states, between citizens of different states; between a state of the Union, or its citizens and foreign states or subjects. As the constitution was originally adopted, the supreme court had jurisdiction over a state at the suit of an individual—but, in anticipation perhaps of the expediency of repudiation, this power has been repealed.

Congress may propose amendments in the constitution, which, when ratified by three-fourths of the States, become law—the only exception being, that no state shall be deprived of its equal vote in the Senate. Lastly, the constitution, and the laws made in pursuance of it, are the supreme law of the land; anything in the constitution or laws of any state notwithstanding.

The Articles of the constitution which we have omitted, and those which have been added by amendment, are principally negative. The most important are, that no export duty shall be imposed; that no state shall have

any foreign relations, make anything but gold or silver a legal tender, or pass a law impairing the obligation of contracts; that a republican constitution is guaranteed to every state; and that all powers not delegated to the Union, or prohibited to the States, are reserved to the States or to the people.

The Articles of Union were submitted in each state to a convention of delegates chosen by the people, and ultimately, though not without great opposition, assented to by each convention.

We have already stated that there exists in America a large party which holds the constitution, of which we have thus given an outline, to be a mere treaty between sovereign states, and binding therefore on each only so far as it is observed by the others—which holds that each state is entitled to judge for itself, whether the acts of the Federal government are authorised by the treaty, and is entitled to disobey them if it believe them to be not so authorised; or, whether authorised or not, if it believes the evil of obedience to be greater than the evil of resistance—which holds that such resistance is not rebellion, but breach of treaty—not treason, but war, and punishable therefore by the soldier, not by the judge.

From these opinions we utterly dissent. They appear to us to be consistent neither with the history nor with the provisions of the Articles of Union. We have seen that the inhabitants of the Union were originally one people; that, although the colonies declared themselves to be sovereign states, no state ever dealt in that charac-

ter with foreign nations; that at first they recognised each other's independence, and tried the experiment of a confederacy; that the experiment was so unsuccessful, that it was only through foreign assistance, and the almost incredible folly of their enemy, that they escaped subjugation during the war, and that after the peace they were on the brink of anarchy; that, pressed by the existing evils of the confederacy, and dreading still greater mischiefs, they resolved to substitute for it a constitution; and that it was the people, not the States, in convention, not by their legislatures, which authorised its delegates to frame that constitution, and which adopted it when framed.

If from the history of the constitution we turn to its text, we find it equally opposed to the supposed sovereignty of the States. The power of amendment is inconsistent with that theory. A convention appointed by the people of three-fourths of the States may, with one exception, make what alterations they think fit. They cannot deprive a state of its equal vote in the Senate, but this is the only limit to their power. The people of twenty-one out of the twenty-six states now constituting the Union—or of thirty out of the forty of which it will soon be constituted—may impose on the others whatever form of government they choose. They may create a hereditary president, or abolish the office altogether; they may guarantee to every state aristocratic or monarchical, instead of republican, institutions; they may establish privileged orders, or vest the central government in a

single assembly elected annually by universal suffrage; they may convert the United States into a monarchy, an aristocracy, or a democracy. It is no answer to this reasoning to say, that no such violent changes are likely to be effected. No state that is legally liable to be thus affected—no state whose whole institutions are at the mercy of its neighbours—is sovereign or independent. And this is the case with every one of the United States. Nor is it certain that important changes will *not* be made. One thing the people of the Northern and Central States, if they acquire the requisite preponderance, certainly *will* do. They will destroy what the Southern States call their domestic institutions; or, if they do not abolish slavery altogether, will treat it as it was treated by England—make its continuance so troublesome that it will not be worth preserving.

Again, the powers of the President are those of a monarch, not of the chief of a confederacy. They far exceed, indeed, those of most European monarchs. The sovereigns of Britain and of France have theoretically the power to choose their own ministers, to reject bills passed by both Houses, and to appoint and dismiss the great majority of the public officers. Practically, each is forced to nominate the ministers whom the Houses or the Chambers point out to him, to assent to the bills which they have passed, and to allow all public officers, except a few of those who come into immediate contact with the government, to retain their places for life. The American President names and retains his own cabinet, rejects any

bills which displease him, and displaces all public officers whose continuance is inconvenient to him—that is to say, all who do not belong to his party, all whose places he wants for his friends, and all who, whether friends or enemies, do not implicitly obey him. Twenty-five years hence, when the wealth and population of America will be doubled, the President, if the Union, and his powers and patronage continue, will be the most powerful individual in the world.

But the provisions of the Articles of Union, which most strongly give to them a national as opposed to a Federal character, are those which create the judicial power. The supreme court, as the ultimate court of appeal, and the ultimate interpreter of the constitution, sits in judgment on all the acts of the States. It may set aside their legislation as unconstitutional, reverse the judgments of their courts, and declare the acts of their officers illegal. Throughout the Union its judges make circuits, and its subordinate district courts are established. They are not bound by the laws of the state in which they sit; they are not dependent on its officers for the execution of their process. Everywhere they exercise over the people a national and immediate sovereignty, before which all provincial power must bend. If the citizens of the local government of a state think that a district or a circuit court, established by Congress, has exceeded its powers, their only appeal is to the supreme court. The decision of that court cannot be questioned.

The superiority of the judges, who are appointed by the

President, and for life, over the state judges, most of whom are elected by the people, and many hold for short terms, or at will, occasions a general wish to resort to the national courts; and the provision which gives them jurisdiction, whenever citizens of different states are parties, enables this to be done in every important case.

It is every day's practice (says Justice Story) for a citizen of one state to remove to another to become a citizen of the latter, in order to enable him to prosecute suits, and assert interests in the courts of the United States.*

This is, perhaps, a forced construction; but the jurisdiction expressly and intentionally given to the national courts is decisive of the question. It enables them to enforce obedience to every lawful act of Congress, or of the executive government, and to decide what acts are lawful. Of this power they can be deprived only by the authority which in every free country must be practically omnipotent—the will of the people. An act of Congress impairing it would be void; and, while it lasts, it certainly appears absurd that states, whose highest functionaries are under the control of a superior tribunal, should call themselves sovereign or independent.

The American constitution was a compromise. Its framers gave to it only a qualified approbation. They believed it to be the best which, in the existing state of passions, prejudices, and interests, could be adopted and obeyed; and they looked forward to its working with an

* Briggs *v.* French, ii. Summer, 255.

anxiety in which fear was predominant. It has on the whole been successful, but it is an unpleasant symptom that its success has not been progressive. During the period of nearly sixty years which has passed since it was constructed, almost every country in Europe has changed its form of government; in almost every country the new constitution has been altered from time to time as its defects became manifest, and has been improved almost from year to year. In the British islands, where the apparent changes have been the least, the real changes and the real improvements have been perhaps the greatest. But in the constitution of the United States few changes have been made: and most of those have been either unimportant or mischievous. To the latter class belong the extensive powers of appointing public officers, and the universal power of removing them, conferred on the President, and the exemption of a state from being sued. The keystone is the judicial power—but this is now less powerful and less independent than it appeared to be in the first years of its institution. The decision that the courts of the United States have no criminal jurisdiction at common law, has much diminished their power. Congress may give to them, and in many cases has given to them, extensive criminal jurisdiction; but what it has given it can take away. The independence of all, except the judges of the supreme court, has been impaired by the Act of Congress of 1802; which abolished many of the circuit courts of the United States, and dismissed the judges without the slightest compensation. Jefferson, under whose

presidency this was done, belonged to the party which maintains the sovereignty of the States. That party is instinctively opposed to the national judicature; and, with the unscrupulousness of the party warfare of America, used this tyrannical means of weakening it.

The presidential part of the constitution is perhaps that which has least answered the intention of its framers. That intention was by a system of indirect election to vest the appointment in a select class. The result has been, that the selection of electors has become a mere form. They have no more discretion than an English dean and chapter under a *congé d'élire*. They are chosen as mere instruments, pledged to nominate a given candidate. The mischiefs arising from the re-eligibility of the President, coupled with his short term of office, are increased by the enormous amount of his patronage, and still more aggravated by the absolute power of removal given to him by Congress, and now uncontrolled by public opinion. Every fourth year the whole Union is convulsed by the struggle which of the two great parties shall have the exclusive enjoyment of the honours, powers, and emoluments of office. And the interval is spent in preparations which distort and misdirect the foreign and the domestic polic both of the government and of the opposition.

Another great defect in the constitution is the exclusio from Congress of all official persons. This is an error int which the framers of democratic constitutions seem naturally to fall. Their jealousy of the executive leads them to exclude its officers from a seat among the representatives

of the people. To a certain degree we ourselves suffer under it. The law which vacates a seat in the House of Commons by the acceptance of office under the Crown, and that which declares the holders of offices under the Crown, created after October 25, 1705, to be incapable of sitting, are examples. We evade these laws, partly by the appointment of peers, partly by creating offices held nominally not under the Crown, but under some other functionary, or under a public board, and partly by acts of parliament excepting new offices from the statute of Anne. Still, however, they are the sources of perpetual inconvenience. In America, where these expedients cannot be used, the mischief is felt in its full force. The President and his ministers escape the responsibility of having to defend their measures in Congress. The members of Congress, with no administrative functions to occupy their time—removed, in the miserable straggling village to which they are banished, from their usual labours and duties and pleasures—have nothing to do but to criticise in its absence the measures of government. They form themselves into committees, each of which assumes the supervision of some branch of administration. They have to act on information, which in many cases must be imperfect, and under the influence not only of their own passions and interests, but of the instructions of their constituents—instructions which a senator finds it difficult to resist, and a representative impossible. That under such circumstances the affairs of the Union have been conducted as tolerably as they have been, is owing partly,

without doubt, to the general intelligence of the people and their long habits and traditions of self-government but also partly, and perhaps principally, to the happines of their position, in a vast territory far exceeding thei wants, though apparently not their desires; with neigh bours only on the South and the North—the first incapabl of resistance, and the second anxious only for peace an commercial intercourse. With such advantage it is diffi cult, as M. de Tocqueville has well remarked, to commi irreparable mistakes.

END OF THE FIRST VOLUME.

LONDON
PRINTED BY SPOTTISWOODE AND CO.
NEW-STREET SQUARE

00093749

Digitized with financial assistance from
Shri Brihad Bhartiya Samaj
on 20 February, 2020